

**Pages 1 - 113**

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Gonzalez , Judge

IN RE: SOCIAL MEDIA )  
ADOLESCENT ADDICTION/PERSONAL )  
INJURY PRODUCTS LIABILITY )  
LITIGATION, )  
 ) Case No. CV 22-03047-YGR  
 )  
 )  
 )  
ALL ACTIONS. )  
 )  
 )  
 )

Oakland, California  
Thursday, November 16, 2023

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

For Plaintiffs:

LEIFF CABRASER HEIMANN & BERNSTEIN LLP  
275 Battery Street, 20th Floor  
San Francisco, CA 94111  
**BY: LEXI J. HAZAM, ESQUIRE**

LEIFF CABRASER HEIMANN & BERNSTEIN LLP  
250 Hudson Street, 8th Floor  
New York, NY 10013  
**BY: KELLY MCNABB, ESQUIRE**

SEEGER WEISS LLP  
55 Challenger Road  
Ridgefield Park, NJ 07660  
**BY: CHRISTOHER SEEGER, ESQUIRE**

MOTLEY RICE LLC  
One Corporate Center  
Hartford, CT 06103  
**BY: MATHEW JASINSKI, ESQUIRE**

Reported By: Pamela Batalo-Hebel, CSR No. 3593, RMR, FCRR  
Official Reporter

**APPEARANCES CONTINUED:**

For Plaintiffs:

COLORADO DEPARTMENT OF LAW  
1300 Broadway, 6th Floor  
Denver, CO 80203

**BY: BIANCA MIYATA,  
SENIOR ASSISTANT ATTORNEY GENERAL**

OFFICE OF THE DEPUTY ATTORNEY GENERAL  
455 Golden Gate, Suite 11000  
San Francisco, CA 94102

**BY: MEGAN O'NEILL  
DEPUTY ATTORNEY GENERAL**

For Meta Defendants:

COVINGTON & BURLING LLP  
1999 Avenue of the Stars, Suite 3500  
Los Angeles, CA 90067

**BY: ASHLEY SIMONSEN, ESQUIRE**

COVINGTON & BURLING LLP  
620 Eighth Avenue  
New York, NY 10018

**BY: PAUL W. SCHMIDT, ESQUIRE**

For TikTok Defendants:

KING & SPALDING LLP  
1180 Peachtree Street, N.E., Suite 1600  
Atlanta, GA 30309

**BY: GEOFFREY M. DRAKE, ESQUIRE**

FAEGRE DRINKER BIDDLE & REATH LLP  
300 N. Meridian Street, Suite 2500  
Indianapolis, IN 46204

**BY: ANDREA PIERSON, ESQUIRE**

For YouTube Defendants:

WILLIAMS & CONNOLLY LLP  
680 Maine Avenue SW  
Washington, DC 20024

**BY: ASHLEY HARDIN, ESQUIRE**



Thursday - November 16, 2023

11:01 a.m.

P R O C E E D I N G S

---000---

**THE CLERK:** Calling 22-md-3047-YGR, In Re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation.

**THE COURT:** Okay. Good morning. Before we get started, Pam, can you hear me okay?

**THE COURT REPORTER:** Yes, Your Honor, I can.

**THE COURT:** So a bunch of things to do today, obviously.

I am going to make an announcement, though, and that is there are ongoing protests happening in San Francisco. Apparently a number of lanes, if not all lanes, of the Bay Bridge westbound were closed due to protesters. Some lanes were closed coming this way. It may be that those protesters may make their way to this federal building.

Hopefully it won't impact us in any way. If it -- if we are impacted and I tell you that you must leave the building, you will go out of this -- those doors, and there are stairs that are right behind this door, actually. There will be CSOs. Everybody should quickly just move and leave the building. Okay? It shouldn't be an issue. Everybody knows you're in here, and we'll proceed.

We have a number of students visiting the federal

1 courthouse today. They will be in here with us for about an  
2 hour, so all you lawyers, please be on your best behavior and  
3 show them the best of our profession. Okay?

4 Good morning.

5 All right. Let's start with the States Attorney General  
6 cases. I can -- and just as a reminder, our sign-in sheet will  
7 reflect all of the lawyers who are here, so we aren't going to  
8 waste any time going through who's here. When you come to the  
9 microphone, though, you do need to make sure to identify  
10 yourself.

11 So I've got lawyers for the State Attorneys General. Yes?

12 **MS. MIYATA:** Good morning, Your Honor. My name is be  
13 Bianca Miyata from the State of Colorado, and I'm here today on  
14 behalf of the States' plaintiffs.

15 **MR. SCHMIDT:** Good morning, Your Honor. Paul Schmidt  
16 from Meta.

17 **THE COURT:** Okay. And so you're going to have -- that  
18 mic needs to go up because you're tall and we can't hear you.

19 **MR. SCHMIDT:** Thank you, Your Honor.

20 **THE COURT:** With respect to the State Attorneys  
21 General, their Complaint, I don't -- I have never anticipated  
22 that I would appoint counsel for the Attorneys General, so I  
23 know you would object, and I think you should object, but in my  
24 view, you have all coordinated. You have your own teams, and I  
25 don't need to necessarily be involved in that.

1 I understand that there are going to be three of you who  
2 will take the lead on behalf of the States, the 33, so that is  
3 yourself, someone from California --

4 **MS. MIYATA:** That's correct, Your Honor.

5 **THE COURT:** And is that person here?

6 **MS. MIYATA:** Yes, Your Honor.

7 **THE COURT:** Is that Megan -- or who is that?

8 **MS. MIYATA:** If I could invite my co-counsel to come  
9 to the podium.

10 **THE COURT:** Yes, please.

11 **MS. O'NEILL:** Good morning, Your Honor. Megan O'Neill  
12 on behalf of the People of the State of California.

13 **THE COURT:** Great. Thank you.

14 And then is this Mr. Lewis?

15 **MR. LEWIS:** Yes, Your Honor. Chris Lewis on behalf of  
16 the Commonwealth of Kentucky.

17 **THE COURT:** Terrific.

18 So my view is that the next step in terms of rounds of  
19 briefing is that we should deal with the States Attorney  
20 General case first.

21 When can -- I'm assuming that there's not going to be an  
22 answer that you're going to -- that the defendants, Meta  
23 defendant, wishes to file a motion to dismiss? Yes or no?

24 **MR. SCHMIDT:** Yes, Your Honor.

25 **THE COURT:** Okay. I've taken a look at the Complaint

1 and the various causes of action. They all seem to be  
2 relatively the same. They're just in 33 different states.

3 So what is the fastest that you can have a motion on file?

4 **MR. SCHMIDT:** Well, I think what we'd request,  
5 Your Honor, is if we're going to go first on the State AGs,  
6 that we would slot them in around the time that we have  
7 proposed for the local government briefing, which we proposed  
8 the first brief on that being February 15th, if --

9 **THE COURT:** Denied.

10 **MR. SCHMIDT:** If that's too late, then we would ask  
11 for January --

12 **THE COURT:** It's too late.

13 So let me explain to you something so that you understand  
14 where I'm coming from.

15 You see all these lawyers in this room?

16 **MR. SCHMIDT:** Of course.

17 **THE COURT:** Yeah. That's all of you, and there's me.  
18 You see one plus one.

19 I actually got some help. That help starts in January,  
20 and I have help for a few months, so you all are going to move  
21 very quickly so that I can use the extra help that I got that  
22 the -- I was able to get another law clerk, and we are going to  
23 move fast because I don't know if I'll get a second law clerk  
24 to deal with this case again.

25 So let me reask the question. How fast can you get your

1 motion on file?

2 **MR. SCHMIDT:** I would think the fastest we could get  
3 it on file would be late December, early January, and we would  
4 request early January.

5 **THE COURT:** You can have late December.  
6 December 22nd.

7 **MR. SCHMIDT:** Thank you, Your Honor.

8 **THE COURT:** How many pages do you want?

9 **MR. SCHMIDT:** We haven't studied that question. I  
10 think what we'd probably ask for is at this point, something  
11 broader that we could come in under, like 80 pages. They're  
12 complicated issues there, and there may be issues there -- I  
13 think as Your Honor flagged, the claims are very similar, but  
14 there are issues of unique state law on the consumer protection  
15 type claims.

16 **THE COURT:** Could you give me an example?

17 **MR. SCHMIDT:** Well, just that the state -- consumer  
18 protection statutes vary in terms of their requirements in some  
19 instances.

20 **THE COURT:** Do they or not? Do you know? I mean, I'm  
21 taking that the State AGs -- have you all talked about the  
22 overlap between the various claims?

23 **MS. MIYATA:** Yes, we have, Your Honor.

24 **THE COURT:** Okay. So how much overlap is there and  
25 how much -- just in general, how much variety?



1           **MS. MIYATA:** Your Honor, I believe there's significant  
2 overlap in the States' claims. While there may be -- there may  
3 be wording or elements that are distinct for certain particular  
4 states, in core, the States' claims regarding unfairness and  
5 regarding deception, as well as the joint claim regarding  
6 COPPA, are essentially similar.

7           **THE COURT:** So I looked at -- and I'm -- I'm pulling  
8 it up. Have the -- has your firm done any analysis of the  
9 elements of the various claims?

10          **MR. SCHMIDT:** Yes, we have, Your Honor.

11          **THE COURT:** Okay. So what's the overlap?

12          **MR. SCHMIDT:** I think --

13          **THE COURT:** That's why I'm asking. So there are 33  
14 different states plus I now have the State of Florida, and I'll  
15 ask you about that.

16           Is there anyone here from the State of Florida?

17          **MS. MIYATA:** Not to my knowledge, Your Honor.

18          **THE COURT:** Okay. So there are 54 claims, but only --  
19 but 33 states; that is, some of the states have multiple  
20 claims, some are, you know -- have deceptive practices versus  
21 unfair acts or practices.

22           So you've looked at the elements. They all seem to be in  
23 one or two buckets. That's why it seems to -- other than the  
24 COPPA violation. That's why I'm asking the question.

25          **MR. SCHMIDT:** Yeah. I think we view it consistent

1 with what Your Honor just said, that there are three buckets.  
2 There's the COPPA violations, is one bucket, and that is  
3 entirely common across the states. There's several arguments  
4 we'd be making there. And then there's the unfair bucket and  
5 the misrepresentations bucket.

6 And those are common in terms of the allegations across  
7 the state, which does allow us to have commonality in briefing,  
8 but we have not conducted the 34, and we do think it probably  
9 makes sense to include Florida in whatever we file. We have  
10 not conducted the 34-state analysis of are they identical on  
11 reliance, for example, or elements like that.

12 And that's where -- that's what guides us in asking for a  
13 little more pages, the possibility of there being some  
14 variation that we'd want to address. We could do that through  
15 an appendix.

16 **THE COURT:** By any chance, do you have a spreadsheet  
17 that outlines the various elements and where there's overlap  
18 versus not?

19 **MS. MIYATA:** Your Honor, we do have such a  
20 spreadsheet, but it is not ready for prime time to submit to  
21 this Court.

22 **THE COURT:** Okay. So if they get a brief to me on  
23 December 22nd -- gosh, that just seems like a long time. It's  
24 only one defendant.

25 **MR. SCHMIDT:** It's one defendant. It's a good number

1 of factual allegations that we need to take into account, and  
2 then there are novel legal issues.

3 **THE COURT:** How are there novel legal issues? These  
4 are standard claims, and you've had this Complaint since the  
5 end of October. You can't tell me that you haven't been  
6 working on this already.

7 **MR. SCHMIDT:** We have been looking at it, and we have  
8 been analyzing it for sure, and we've been looking at in the  
9 context of the broader litigation. And to kind of elaborate on  
10 the point I said earlier in terms of differences, there are  
11 differences in terms of reliance. There are differences in  
12 terms of things like statutory safe harbors in different  
13 states. We would want to be able to address those fairly.

14 But we'll obviously work within whatever Your Honor  
15 orders.

16 **THE COURT:** Once a brief is filed, how much time do  
17 the States need to respond?

18 **MS. MIYATA:** Your Honor, we certainly do have -- well,  
19 we are well coordinated. We do have multiple levels of  
20 approval required in the States in order for us to provide our  
21 response.

22 I believe if the defendant has had, by my rough math, nine  
23 weeks' opportunity by the end of December --

24 **THE COURT:** I'm not sure that I'm going to give them  
25 that much time.

1           **MS. MIYATA:** Okay.

2           **THE COURT:** I need to know how much time you need from  
3 the time the brief is filed.

4           **MS. MIYATA:** We would ask for six to eight weeks,  
5 Your Honor.

6           **THE COURT:** All right.

7           And what are you asking for in response?

8           **MR. SCHMIDT:** In a reply, we'd probably request four  
9 weeks, Your Honor.

10          **THE COURT:** Okay. I'll give you dates later.

11          Is there anything else that we need to speak about in  
12 terms of the State AGs' participation?

13          **MS. MIYATA:** Not at this time from us, Your Honor.

14          **THE COURT:** Okay. Thank you. All right. Let's --

15          **MR. SCHMIDT:** Your Honor, without wanting to  
16 unreasonably prolong argument on this issue, may I just say one  
17 more thing?

18          **THE COURT:** You may.

19          **MR. SCHMIDT:** We are faced with a range of claims, and  
20 we have been trying to address the claims in turn. This is one  
21 that, based on our discussion with the State Attorneys General,  
22 we had -- and obviously everything we discuss is subject to the  
23 Court's approval, and now we have the Court's direction, but we  
24 had understood that at least between the parties, there was no  
25 rush to brief this which has informed where we have been

1 devoting our resources.

2 There are novel issues here in terms of COPPA that haven't  
3 been briefed previously in this litigation in terms of the  
4 details of --

5 **THE COURT:** What if I took out COPPA? If that's the  
6 sticking point, then I could do this -- I am trying to get  
7 something to me sooner because I don't want to waste resources.  
8 I don't have the luxury of adding staff.

9 So we may do it then in -- in two waves, but, you know,  
10 it's not as if, again, you don't -- you don't have and haven't  
11 had for considerable period of time the COPPA claims. The  
12 COPPA claims were in the Master Complaint for the individual  
13 defendants, so you've had this analysis before, or at least not  
14 analysis, but you've been on notice for a year.

15 **MR. SCHMIDT:** Yes. It's a very different COPPA claim  
16 from individuals than it is from State Attorneys General in  
17 terms of what needs to be proven and the elements of the claim.  
18 But I understand what Your Honor is saying.

19 There -- I wouldn't want to give the view that it becomes  
20 much easier with COPPA out because there's a lot --  
21 particularly what we struggled with in the briefing on the  
22 personal injury cases is how do you, in the setting where  
23 you've got these massive complaints, engage with the facts at  
24 an appropriate level, and that's a challenge on both sides.  
25 That's, frankly, more of a challenge on the consumer protection

1 sides.

2 **THE COURT:** Yeah. I don't understand your comment.

3 **MR. SCHMIDT:** It's just -- and I'm sorry for not being  
4 clear, Your Honor. It's just that there's a lot of factual  
5 allegations in the Complaint and tracking those factual  
6 allegations where we're in a position where we can fairly say  
7 we've addressed them in the way that's appropriate for the  
8 Court, that takes some work. That's all I'm trying to say,  
9 Your Honor.

10 **THE COURT:** Well, remember, on a motion to dismiss --

11 **MR. SCHMIDT:** Yes.

12 **THE COURT:** -- we aren't dealing with resolving  
13 factual issues.

14 **MR. SCHMIDT:** But we have to account for the factual  
15 issues in terms of the legal arguments we make. I agree with  
16 Your Honor in terms, of course, we're taking the facts as pled,  
17 but in terms of being able to address the legal impact of them,  
18 that takes some time. That was the point I was trying to make.

19 **MS. MIYATA:** Your Honor --

20 **MR. SCHMIDT:** But we'll look for Your Honor's  
21 guidance. I just wanted to take the opportunity to say that.

22 **MS. MIYATA:** Apologies.

23 If I may, I believe the States' preference would be to  
24 have COPPA briefed at the same time as the rest of the States'  
25 claims, the concern being that if the UDAAP claims are briefed

1 prior to COPPA and then there is an adverse ruling to the  
2 States later regarding the COPPA claim, then all of the  
3 briefing regarding the UDAAP claims may have been an  
4 inefficient detour of time for the Court.

5 **THE COURT:** Okay. Let's talk about Phase 2 on the  
6 individual Complaints. Who is going to address those topics?

7 **MR. SCHMIDT:** That's still me, Your Honor, Paul  
8 Schmidt.

9 **MS. HAZAM:** Good morning, Your Honor. Lexi Hazam on  
10 behalf of the individual plaintiffs.

11 **THE COURT:** I don't see the need in filing an Amended  
12 complaint until we -- until briefing on the various issues is  
13 resolved.

14 **MS. HAZAM:** Plaintiffs would agree, Your Honor.  
15 Plaintiffs would agree, Your Honor.

16 **MR. SCHMIDT:** From the defense perspective,  
17 Your Honor, that's something we've wanted the Court's guidance  
18 on, and I hear what Your Honor just said on that. That's  
19 helpful guidance for us.

20 We've been studying the issues of what further pleadings  
21 we've had, both the Court's suggestion about further work on  
22 the Short Form Complaints and then the point Your Honor just  
23 spoke to on the -- on the Master Complaint.

24 **THE COURT:** And with respect to being efficient, it  
25 seems to me, given that the States' Complaints deal with COPPA,

1 the unfair bucket, the misrepresentation bucket, that Claim No.  
2 7 for unfair trade practices in violation of consumer  
3 protection laws, that's similar; No. 8, fraudulent concealment  
4 and misrepresentation, that's similar; 9, negligent concealment  
5 and misrepresentation, that's similar. It would seem that  
6 those -- that those three claims could be briefed at the same  
7 time efficiently.

8 **MS. HAZAM:** Your Honor, plaintiffs would agree and, in  
9 fact, suggested those claims be briefed at the same time that  
10 the States brief their claims.

11 **THE COURT:** Any problems with that?

12 **MR. SCHMIDT:** No, Your Honor. We wanted those briefed  
13 earlier so that, I think, is consistent with what Your Honor is  
14 contemplating.

15 There's a related issue which there have been claims  
16 asserted against one firm against Mark Zuckerberg in his  
17 personal capacity, and I think these overlap with some of these  
18 claims, and we'd want the chance to brief those.

19 **MS. HAZAM:** Plaintiffs would agree, Your Honor.

20 **THE COURT:** And which case is that?

21 **MR. SCHMIDT:** In some of the Short Form Complaints --  
22 I believe there's about 20 right now -- they have added  
23 allegations against Mark Zuckerberg in his personal capacity  
24 that we've been waiting for the opportunity to address. Those  
25 are all claims filed by the Motley Rice firm.



1           **THE COURT:** Okay.

2           Ms. Hazam, do you have anything to add in terms of timing?

3           **MS. HAZAM:** The timing that Your Honor suggested  
4 provisionally for the filing of the motion and then the timing  
5 that the States suggested for the timing of the opposition  
6 would be acceptable to individual plaintiffs for purposes of  
7 these claims.

8           **THE COURT:** All right. What is going on -- give me an  
9 update in terms of the Short Form Complaints.

10          **MS. HAZAM:** The Short Form Complaints are filed in  
11 accordance with the Court's prior orders implementing the Short  
12 Form Complaint, and so they use that Short Form Complaint  
13 entered by the Court and they follow the schedule that was  
14 entered by the Court. That is happening --

15          **THE COURT:** I should have said something differently.  
16 What is happening with the fact sheets?

17          **MS. HAZAM:** So the parties spent many months  
18 negotiating the form of a Plaintiff Fact Sheet and associated  
19 orders and forms under the auspices of the JCCP court.  
20 However, the MDL plaintiffs did participate in those  
21 negotiations.

22          The parties have now agreed on the form of the Plaintiff  
23 Fact Sheet and I believe on a number of the associated forms,  
24 although there may be one or two remaining small disputes that  
25 are before the JCCP judge.

1           It is plaintiffs' position that those same PFS and  
2           accompanying forms could be entered by this Court. We attached  
3           to the status report the form of the PFS that was current at  
4           that moment. I believe there may have been some very small  
5           changes, but plaintiffs would be prepared to submit the final  
6           that has been agreed upon in the JCCP.

7           **THE COURT:** Okay. I don't remember seeing that, so I  
8           will look at it.

9           And for the high school students, lawyers like to use  
10          acronyms. PFS means "Plaintiff Fact Sheet." So we have one  
11          big Complaint. It's 300 pages. It outlines everybody's  
12          allegations, and then to the extent there's an individual  
13          person who wants to bring a claim, they're saying, Yes, I sign  
14          on to the big Master Complaint, and then they attach or they  
15          disclose in these Plaintiff Fact Sheets their specific  
16          information. So that's what the lawyers are talking about.

17          And when they refer to this other acronym, JCCP, there is  
18          a set of these cases also that were filed in the State of  
19          California. All of those cases were consolidated in front of  
20          Judge Kuhl, who is a state court judge in Los Angeles, and  
21          that's what they're talking about with respect to that issue.

22          Okay. So do you have a docket number for me so that I can  
23          take a look at that?

24          **MS. HAZAM:** Yes. It was an exhibit to the plaintiffs'  
25          status report, but, Your Honor, we would be pleased to submit

1 the updated form if Your Honor so wishes. I believe the  
2 changes to it were quite minimal, but let me tell you what the  
3 exhibit number was.

4 **MS. MCNABB:** Your Honor, good morning. Kelly McNaab  
5 from Lief Cabraser on behalf of the individual plaintiffs.

6 The Plaintiff Fact Sheet that was submitted to the Court  
7 was Exhibit A to the agenda. That fact sheet has now been, as  
8 Ms. Hazam said, changed slightly to address some concerns that  
9 were raised by a sample of plaintiffs that had --

10 **THE COURT:** Can you hold on just a moment? I'm  
11 distracted with a security issue. Just a minute.

12 Oh, sorry. I thought -- we'll deal with that later. Tell  
13 them tentatively yes.

14 Okay. My apologies. Start again.

15 **MS. MCNABB:** Okay. Your Honor, Kelly McNaab, again,  
16 for individual plaintiffs.

17 The fact sheet that was submitted to Your Honor is  
18 Exhibit A to the agenda, so it's Docket No. 417-1. That fact  
19 sheet has subsequently been slightly modified to address some  
20 issues that were raised in the JCCP after a sample of  
21 plaintiffs completed that fact sheet.

22 It was important for Judge Kuhl that the plaintiffs who  
23 would be completing the fact sheet actually understood the fact  
24 sheet and could complete it. As you said, lawyers like to use  
25 complicated language and acronyms.

1           We are willing to submit and intend to submit that revised  
2 fact sheet to Your Honor.

3           **MS. PIERSON:** Good morning, Your Honor. If I may,  
4 Andrea Pierson, Faegre Drinker, on behalf of TikTok and  
5 ByteDance.

6           It is accurate to say that a final Plaintiff Fact Sheet  
7 was submitted to Judge Kuhl on November the 14th. That's a  
8 slightly different document than the document that was attached  
9 to the agenda, but I think it's important that the Court  
10 understand a couple of things.

11           One is that the Plaintiff Fact Sheet is one of a series of  
12 documents and orders that Judge Kuhl has entered, and the  
13 Plaintiff Fact Sheet actually is not the first step in the  
14 process.

15           To the contrary, Judge Kuhl had requested and the parties  
16 submitted a series of forms that include, first, the plaintiffs  
17 providing the known account user names and various pieces of  
18 information that allowed the defendants to locate the accounts  
19 at issue.

20           Second, the defendants identify any additional user  
21 accounts that the defendant has reason to believe are or were  
22 used by plaintiffs, along with specific information that a  
23 plaintiff may use to confirm whether the accounts are actually  
24 theirs.

25           After that happens, then the plaintiffs confirm whether

1 each account is registered to them, whether they have been able  
2 to access the account with good faith efforts, and whether they  
3 provide consent for the defendants to provide account downloads  
4 substantially similar to the downloads that are already  
5 available to them and are publicly available. Then the  
6 defendants provide such downloads for inaccessible accounts  
7 where consent is provided.

8 There is both a Plaintiff -- Plaintiff Fact Sheet  
9 Implementation Order and a User Account Implementation Order  
10 that's part of the process in the JCCP.

11 And there is one outstanding dispute between the parties  
12 before Judge Kuhl that will be briefed next week and heard at  
13 the December 7th status conference. The defendants anticipate  
14 a similar process in the MDL, although tweaks to some of the  
15 deadlines may be necessary to account for differences.

16 In addition, this Court's ruling earlier this week on the  
17 motion to dismiss has the potential to affect the information  
18 required of plaintiffs' fact sheet. Accordingly, we intend to  
19 evaluate the need for such changes, if any, in light of the  
20 Court's ruling.

21 That's a long-winded way of saying, Your Honor, that the  
22 process is not yet completed in the JCCP, and what we submit to  
23 Your Honor may be different than what's submitted to  
24 Judge Kuhl. We're in the process of evaluating that. I just  
25 didn't want the Court to be led to believe that it's simply a

1 matter of reviewing the Plaintiff Fact Sheet that is attached  
2 to the agenda. There is actually still a fair amount of work  
3 to be done between the parties, and we'll need to confer,  
4 obviously, with the MDL plaintiffs about those documents before  
5 they're submitted to the Court.

6 **MS. HAZAM:** Your Honor, if I may, all of the  
7 associated documents that counsel referred to are indeed the  
8 ones I was meaning to refer to when I said "associated  
9 documents" and "explained in the status report."

10 It is plaintiffs' view that we should not go back to the  
11 drawing board on negotiating this PFS, which was a very lengthy  
12 process that was judicially supervised. And so while we are  
13 happy to meet and confer with the defendants in the interests  
14 of time, as Your Honor indicated earlier, we do not believe  
15 that we should now have another process that lasts for many  
16 months.

17 So we don't anticipate on our side that there should be  
18 substantial changes and would like to have this process get  
19 under way as it is in the parallel litigation.

20 **MS. PIERSON:** And we agree, Your Honor. We're not  
21 saying something different. We just want to clear that these  
22 are not documents that can be wholesale adopted by this Court  
23 without an opportunity at least to conform them to this  
24 proceeding, but we don't anticipate that will take a great --  
25 great deal of time.

1           **THE COURT:** Okay. So is this on the proposed form of  
2 order?

3           **MS. HAZAM:** It was not because Plaintiff Fact Sheet  
4 was not quite complete at the time that the status report was  
5 submitted to Your Honor. That much is now complete. I believe  
6 the implementation order is also complete. Those could be  
7 proposed to Your Honor as a proposed order with the parties  
8 meet and confer.

9           I would suggest, on behalf of plaintiffs, that there be a  
10 deadline set for this so that this process does not become  
11 drawn out.

12           **MS. PIERSON:** As I mentioned, there's briefing on the  
13 User Account Implementation Order that will be submitted next  
14 week and will be discussed by Judge Kuhl at the hearing on  
15 December the 7th. So that document, which is a critical part  
16 of the process, won't be complete until sometime after our  
17 hearing with Judge Kuhl on December the 7th.

18           **MS. HAZAM:** And, Your Honor, what I would suggest is  
19 I'm sure we can have this done by the December 13th conference.  
20 The dispute over the user account info form is a very limited  
21 one that has already been discussed at length by the parties  
22 and previewed to the Court in the JCCP, so I believe that we  
23 could come back to court on the 13th with final forms.

24           **THE COURT:** And what is the nature of the dispute?

25           **MS. PIERSON:** There's a statutory issue under RUFADAA

1 that is currently being briefed that Judge Kuhl will decide.

2 **THE COURT:** You have used an acronym, which I don't  
3 know what it means.

4 **MS. PIERSON:** I wish I could tell you. I don't know  
5 off the top of my head.

6 **MS. HAZAM:** It's a California statute, Your Honor.  
7 It's the Revised Uniform Fiduciary Access to Digital Assets  
8 Act, and the dispute -- this is probably why the parties refer  
9 to it with shorthand, but the dispute has to do, I believe --  
10 and counsel can weigh in here as well, but I believe the  
11 dispute has to do with whether that requires plaintiffs to be  
12 doing things like having state -- official state  
13 representatives at the point at which they fill out this user  
14 account info form and/or death certificates in the case of  
15 deceased plaintiffs, deceased minor plaintiffs of a certain  
16 age. That's a very limited subset of the plaintiffs to begin  
17 with, and I believe this is an issue that would be promptly  
18 resolved by Judge Kuhl.

19 **MS. PIERSON:** We agree. It's a narrow issue. I can't  
20 predict when Judge Kuhl will rule, but it will certainly be  
21 sometime after December the 7th.

22 **THE COURT:** Why? Why wouldn't she just rule on the  
23 papers?

24 **MS. PIERSON:** I don't -- I don't know. She may,  
25 Your Honor. That's possible.



1           **THE COURT:** And when is it going to be fully briefed?

2           **MS. PIERSON:** Next week. I think that's right. Yeah.

3           It may be later this week. It may be -- November the 20th.

4           Sorry. Our briefs are due on November the 20th, as I recall  
5           it.

6           **THE COURT:** No replies?

7           **MS. PIERSON:** No. Simultaneous briefing.

8           **THE COURT:** So I'm correct.

9           **MS. PIERSON:** You are, Your Honor, yes.

10          **THE COURT:** Okay. I'll talk to her about it.

11          All right. So it seems to me then we should be able to  
12          have the implementation order done by December 13th or at least  
13          discussed on that day and issued shortly thereafter.

14          What else then needs to be done on the individual  
15          Complaints?

16          **MS. HAZAM:** Your Honor, with regards to Short Form  
17          Complaints and Plaintiff Fact Sheets, I believe that that is  
18          what needs to be done, and we now also have Your Honor's  
19          guidance and await Your Honor's decisions regarding the dates  
20          for the additional briefing on the individual plaintiffs'  
21          Complaints.

22          **MR. SCHMIDT:** If I may add something short to that,  
23          Your Honor.

24          We do appreciate on the defense side -- I trust on both  
25          sides -- getting Your Honor's ruling, and we've been studying

1 that pretty closely. It obviously gives us very good guidance  
2 in terms of how to proceed.

3 I mentioned earlier that we do want to look at the  
4 language in Your Honor's ruling on what happens with any  
5 potential further practice regarding Short Form Complaints, and  
6 we'll study that and come back to plaintiffs and come back to  
7 the Court on that.

8 One other issue that I simply wanted to flag that was very  
9 important to us in terms of understanding the Court's ruling is  
10 we looked very closely at what Your Honor said about the  
11 failure-to-warn claims in terms of how they fit. We understand  
12 Your Honor's ruling to be that those claims are subject to the  
13 same defect allegations that can proceed as to the other  
14 product liability claims. I think Your Honor said that in  
15 Footnote 60 and in the discussion of the product liability  
16 section.

17 Your Honor did give us guidance on how we brief that  
18 issue, and that's something we will take into account in our  
19 future briefing. We did try to brief that issue in both our  
20 opening brief, to which plaintiffs respond, and in our reply  
21 brief, but that will obviously guide our future -- our future  
22 briefing.

23 That failure-to-warn issue and the scope of that is an  
24 issue that may implicate some of the further briefing down the  
25 road, some of the next-round briefing.

1           **MS. HAZAM:** Your Honor, plaintiffs fundamentally  
2 disagree with that interpretation of the Court's ruling. We  
3 believe that the Court upheld and did not grant defendants'  
4 motion to dismiss as the failure-to-warn claims, which are  
5 Counts 2 and 4, and are not mentioned at the conclusion of  
6 Your Honor's order.

7           Your Honor also stated on page 20 of the order not only  
8 that defendants had not briefed the application of Section 230  
9 to any of the failure-to-warn claims, which alone would be the  
10 basis to deny the motion as to those claims, but "that the duty  
11 arises not from their publication of content but from their  
12 knowledge based on public studies or internal research of the  
13 ways that their products harm children so they could warn for  
14 any and all of the alleged defects."

15           **MR. SCHMIDT:** And, Your Honor, I don't want to be in a  
16 position of having heard Your Honor's early guidance of reading  
17 random sentences out of Your Honor's order. I think there's a  
18 sentence before what counsel quoted that refutes that reading  
19 of Your Honor's order. Footnote 60 does. The introduction of  
20 the products section does, and if that's something we should  
21 get further guidance on, we can do that, but that's a pretty  
22 important issue from our perspective in terms of defining how  
23 the cases proceed and even the further briefing potentially.

24           **MS. HAZAM:** Your Honor, I would note that in our view,  
25 Footnote 60 supports our understanding that the Court declined

1 to dismiss the failure-to-warn claims and, in fact, indicated  
2 that the failure to warn could extend to features beyond those  
3 that Your Honor put in the initial list of features that were  
4 precluded under Section 230 so we also have a fundamentally  
5 different interpretation of that footnote, and we believe that  
6 the failure to warn is not about the source and the specific  
7 defect but about warning that the platforms are unsafe and  
8 cause health problems.

9 **THE COURT:** Plaintiffs are correct.

10 **MR. SCHMIDT:** Okay. Then we may request leave to file  
11 further briefing on that. We'll study that, Your Honor, and we  
12 may request.

13 **THE COURT:** That's going to be a long way away.

14 **MR. SCHMIDT:** Understood.

15 **THE COURT:** You had an opportunity. You failed to do  
16 it, and we have lots of things to do before that.

17 **MR. SCHMIDT:** In terms of our briefing, Your Honor, we  
18 had understood this issue to be subsumed within the broader  
19 arguments we were making, and then at page 4 and page 9 of our  
20 Section 230 brief, we did say expressly that the  
21 failure-to-warn claims failed for the same reasons that the  
22 other claims failed.

23 When plaintiffs came back and said, We don't think  
24 you've -- we disagree with your arguments, we don't think  
25 you've addressed this enough, we then addressed it again in our

1 reply brief for close to a page on pages 8 to 9 of our reply  
2 brief. We did try to put it before the Court.

3 We obviously take Your Honor's reaction into account in  
4 our future briefing, but it is something we did try to brief,  
5 and we understood it to be subsumed within our briefing,  
6 including with specific cases that said failure-to-warn claims  
7 don't change the 230 analysis.

8 **MS. HAZAM:** Your Honor, respectfully, plaintiffs  
9 believe that this issue has been clearly decided by the Court  
10 and that no further briefing is necessary.

11 **THE COURT:** Like I said, this is -- that ship has now  
12 sailed, and to the extent that we revisit it later, I'll make a  
13 little note, but the plaintiffs have it right at this point.

14 **MR. SCHMIDT:** Okay. Thank you, Your Honor. We'll  
15 take that into account and think about how to proceed on that  
16 basis.

17 **THE COURT:** So with respect to the individual  
18 Complaints, we've got -- the next set will be the  
19 misrepresentation claims, and then there will be the balance of  
20 the claims. Is there any need to segregate that in any way?

21 **MS. HAZAM:** Your Honor, from plaintiffs' perspective,  
22 I don't believe there is, and in the interest of proceeding  
23 efficiently and in light of the Court's staffing concerns, we  
24 would be agreeable to going forward on the same schedule as for  
25 Counts -- I think it's 7, 8 and 9 Your Honor specified earlier.

1           We had proposed those proceedings separately because we  
2           believed that Counts 7, and 9 should happen concurrently with  
3           the briefing on the State AGs' related claims, but given that  
4           Your Honor has now put those -- the claims from the individual  
5           plaintiffs that are similar on the same schedule as the State  
6           AGs' briefing schedule, we would be fine with including the  
7           others as well.

8           **MR. SCHMIDT:** From the defense perspective,  
9           Your Honor, we agree there is no need to segregate out the  
10          claims other than 7, 8, and 9. We would request more time to  
11          brief that second tranche of claims other than 7, 8, and 9.

12          **THE COURT:** So how is it that you would need more time  
13          when you've got Covington, Munger, King & Spalding -- I never  
14          get this right -- Faegre --

15          **MR. SCHMIDT:** Faegre. Sorry.

16          **THE COURT:** Wilson Sonsini. One, two, three, four,  
17          five mega firms, and you're asking for more time. Why?

18          **MR. SCHMIDT:** It's ironic, but I could personally  
19          testify to the fact that that adds time on our side. Much in  
20          the same way the State AGs have internal client review and  
21          things like that, we do, too, and that takes longer. We try to  
22          put together a set of unified briefs for the Court that is  
23          useful to the Court where it is not parsed out by defendant,  
24          and to do that takes time working across those firms and  
25          working with our clients.

1           **THE COURT:** Well, you will need to figure out a way to  
2 make it more efficient.

3           **MR. SCHMIDT:** We have been trying, Your Honor.

4           **THE COURT:** Sometimes shorter periods of time focus  
5 attention.

6           **MR. SCHMIDT:** I have had familiarity with that  
7 experience, Your Honor, without withdrawing the request.

8           **THE COURT:** Okay.

9           Anything else on the claims with respect to the  
10 individuals?

11           **MS. HAZAM:** Not with regards to pleadings or with  
12 regards to Plaintiff Fact Sheets. There were some other issues  
13 raised in the status report, some of which go to school  
14 district plaintiffs, some --

15           **THE COURT:** I'm not asking about those.

16           **MS. HAZAM:** Understood.

17           **THE COURT:** Anything else with respect to this set  
18 that you want to talk about?

19           **MS. HAZAM:** Your Honor, plaintiffs have flagged for  
20 the Court an issue with regards to what we would regard as  
21 refreshing the production order previously by the Court of  
22 productions made by various defendants to State AGs conducting  
23 investigations into addiction issues.

24           **THE COURT:** Let's talk about discovery later.

25           **MS. HAZAM:** Okay.

1           **THE COURT:** Anything else?

2           **MS. HAZAM:** Other than the pending disputes that have  
3           been submitted to Your Honor for hearing when Your Honor deems  
4           appropriate with regards to the protective order and the  
5           coordination order.

6           **THE COURT:** So I'll want to talk to you about the  
7           coordination order.

8           With respect to the protective order, I'm going to ask  
9           that you take that back for reconsideration to Magistrate  
10          Judge Kang, and that is because, again, we've got limited  
11          resources here. When the conflict arose with Judge Hixson, I  
12          had to get a new magistrate judge. There was a change because  
13          Magistrate Judge Cisneros was needed in a different case.

14          Given that Judge Kang is going to be working on this, I'd  
15          like him to look at it fresh, see if he can resolve your  
16          disputes since he's the one that's going to be managing the  
17          discovery, and then if you still can't resolve it with him,  
18          then I'll look at it. So I'm going to refer you back to him to  
19          try to resolve that. Okay?

20          **MR. SCHMIDT:** Thank you, Your Honor.

21          **MS. HAZAM:** Understood, Your Honor.

22          **THE COURT:** Okay. Let's talk about the school  
23          district Complaints.

24          **MS. HAZAM:** Thank you, Your Honor. My colleague,  
25          Chris Seeger, will handle that.



1           **THE COURT:** Yeah. Chris Seeger, you can -- just hold  
2 on. I don't need you up here yet.

3           I received a number of requests on the docket for people  
4 who wanted to be appointed. I don't know if any of them are  
5 here. If you are, I want you to raise your hand, and I have  
6 something for you.

7           Thomas King. Is Thomas King here or someone from his  
8 firm? Raise your hand or keep it raised, sir. No? Thomas  
9 King? No. Okay.

10          The next one is Joseph Meltzer and Melissa Yates. Not  
11 here as well.

12          How about James France? No.

13          Thomas Cartmell. Okay. We're going to give you  
14 something.

15          Aelish Baig? All right. Give you that.

16          On the other side, Derek Loeser. Okay.

17          Anne Marie Murphy.

18          Cecchi.

19          Ronald Johnson?

20          Okay. Is there anyone else who -- hold on. Is there  
21 anyone else who's here who wants to apply to be on that  
22 leadership? Okay. Stand up and give me your names.

23                 **MR. WEINKOWITZ:** Mike Weinkowitz.

24                 **THE COURT:** Mike Weinkowitz.

25          Okay. Who else?

1           **MS. WEAVER:** Leslie Weaver, Your Honor.

2           **THE COURT:** Leslie Weaver.

3           Who else?

4           **MR. BRYANT:** Arthur Bryant.

5           **THE COURT:** Arthur Bryant. Okay.

6           Anyone else? All right.

7           Please fill out that form and raise your hand when you're  
8 ready to turn it back in.

9           For the students, this is what we call a pop quiz for  
10 lawyers.

11          All right. Mr. Seeger, you can come to the mic now. What  
12 would you like to say?

13          **MR. SEEGER:** I will admit, I'm a little nervous right  
14 now. I don't know where this is going.

15          Good morning, Judge.

16          So you may remember, a few months ago we tried to get out  
17 ahead of this, maybe too far out ahead.

18          **THE COURT:** So I can tell you that when I received  
19 your information, I didn't know if this case was going to leave  
20 the gate.

21          **MR. SEEGER:** Correct.

22          **THE COURT:** And so I had -- I was not focused on  
23 anything else because the defendants were adamant that this  
24 case should be thrown out.

25          **MR. SEEGER:** Uh-huh.

1           **THE COURT:** And I didn't know what -- whether it would  
2 be thrown out and you would all be up at the Court of Appeal at  
3 this point or what.

4           **MR. SEEGER:** Yeah.

5           **THE COURT:** So now I know. It's not getting thrown  
6 out. And now I am going to engage on this topic.

7           **MR. SEEGER:** Okay.

8           **THE COURT:** And I'm going to engage a little more even  
9 with respect to the current leadership, which we'll talk about.  
10 But now I know that this thing's left the gate.

11          **MR. SEEGER:** Yeah.

12          **THE COURT:** So go ahead.

13          **MR. SEEGER:** So it is our view that we're at a point,  
14 as Your Honor seems to agree, that we should organize this.  
15 Our view is it should be organized under the leadership that  
16 you've already appointed as a subcommittee. And that we wanted  
17 to -- we thought we'd put together a mix of people that were  
18 involved in all aspects of the litigation, like Mr. Weinkowitz,  
19 for example, is involved in personal injury cases as well as  
20 school district cases. I think Mr. Cartmell as well.  
21 Mr. Cecchi is only involved in school district cases. So we  
22 tried to find a mix.

23           And I'd like to just spend 30 seconds on why those names  
24 as opposed to others. They're all very good lawyers. We  
25 probably all know each other.

1 Mr. Cecchi has been very much involved in trying to help  
2 organize since this came to our attention that school districts  
3 were going to begin filing cases, and he's played a -- he  
4 has -- in our view, he has shown himself to be a leader in the  
5 sense that he's been organizing meetings, trying to keep the  
6 group cohesive, represent positions, and getting to us on ideas  
7 on how this might be organized.

8 Mike Weinkowitz is already a member of the PSC, Judge.

9 And Mr. Cartmell has an application before you, and the  
10 Court may not remember this, but originally applied for a PSE  
11 position, but he was engaged in JUUL and, in fact, engaged in a  
12 trial, I believe in this court, involving a JUUL case, which  
13 has now settled.

14 **THE COURT:** So I have concerns about the bar always  
15 picking the same people.

16 **MR. SEEGER:** Understood.

17 **THE COURT:** And that's what concerns me about some of  
18 the recommendations, and I'm not going to just rubber stamp it.

19 So I understand that one of the -- well, on the positive  
20 side, there's experience. On the other side, there's plenty of  
21 experience, and there's -- it's important to have a variety of  
22 people at the table.

23 So one of the things that I'm asking -- and I'll go and  
24 have those picked up again, as you did not get a copy of the --

25 **MR. SEEGER:** No.

1           **THE COURT:** I want to know how many cases they have in  
2 the MDL. It looks like some people have school districts  
3 retained but not yet in the MDL. I want to know their  
4 geography. And then I'm going to have some questions for them.

5           But what I'd like to know from the three of you, the  
6 leaders that I appointed, is whether you have problems with any  
7 of these individuals, whether you've got experience that  
8 they're not team players, that they do not carry their weight,  
9 but that's what I need to know.

10           So it's -- it's -- I got -- I have to take, given what's  
11 going on, a very broad view on this.

12           So I will be back in touch.

13           **MR. SEEGER:** Okay.

14           **THE COURT:** Let's pick up those forms, and then we'll  
15 start from the top.

16           Mr. Cartmell, come on forward.

17           **MR. CARTMELL:** Good afternoon, Your Honor. Thomas  
18 Cartmell.

19           **THE COURT:** I need your form.

20           **MR. CARTMELL:** Okay.

21           **THE COURT:** And do I have the forms back from  
22 everybody at this point?

23           Sorry. I have problems with your writing. Is it Kansas  
24 or --

25           **MR. CARTMELL:** I'm sorry. I actually didn't finish

1 filling that out, Your Honor. I apologize.

2 I think we have cases in about every state. There are  
3 some states that we don't have cases involved as far as school  
4 districts, but I don't know exactly today which those are.

5 **THE COURT:** So currently you only have six, but you've  
6 got, you say, 375 retained?

7 **MR. CARTMELL:** Approximately 375.

8 **THE COURT:** Okay. And you're based in Kansas?

9 **MR. CARTMELL:** I'm actually on the Missouri side in  
10 Kansas City.

11 **THE COURT:** Okay. Do Missouri and Kansas follow the  
12 Restatement or not?

13 **MR. CARTMELL:** They do.

14 **THE COURT:** What are your thoughts with respect to --  
15 so I understand generally the school districts' cases are  
16 public nuisance-like cases.

17 **MR. CARTMELL:** Your Honor, we will have public  
18 nuisance and negligence claims.

19 **THE COURT:** Okay. And in terms of your abilities,  
20 what would you like me to consider? And how much time would  
21 you be personally putting into this as opposed to your firm?

22 **MR. CARTMELL:** I would like you to consider my  
23 relevant experience. I heard what you said, and I get the idea  
24 of you don't want always the same type of people.

25 I do think that the relevant experience I've had over the

1 last six years in opioids, working up and put -- putting  
2 together the trial package for the Teva case. In that case,  
3 ended up representing about 100 government entities -- those  
4 were actually counties and cities -- and pursuing a public  
5 nuisance case there.

6 And then the JUUL case, obviously, sort of from soup to  
7 nuts, being involved in every aspect of the JUUL case. And  
8 then being lead trial counsel with Sarah London from Lief  
9 Cabraser and Dena Sharp from Girard Sharp. That experience, I  
10 think, has given me valuable experience that I think can be  
11 very helpful in this litigation.

12 The public nuisance cases are different and unique for a  
13 whole lot of reasons, and I think going through that process  
14 all the way from the very beginning of the case and through a  
15 trial, although we settled the case short of a verdict, has  
16 given me really relevant experience that -- that I would like  
17 to offer this case.

18 I've worked with a lot of these people a lot over the  
19 years, and I'm committed to working on this case as far as my  
20 time versus others in my firm. I'm committed to work on this  
21 case a hundred percent of my time. You know, I'm working on  
22 the JCCP right now, but I've been working with both the MDL and  
23 the JCCP, Your Honor.

24 **THE COURT:** What is your role in the JCCP?

25 **MR. CARTMELL:** So I'm helping actually with the

1 government entities there. I'm the co-lead of the Meta  
2 defendant, and I'm helping with the expert witnesses there.

3 **THE COURT:** Okay. So, again, for the high schoolers  
4 in the room, we have these massive cases that extend across the  
5 United States. You can't have hundreds and hundreds of  
6 lawyers. It would just be chaos.

7 So the Court appoints a certain number of people to take  
8 leadership roles, and that's what all these folks want me to  
9 do. They want me to appoint them. That's why I'm asking them  
10 these questions.

11 Okay. In about five minutes, Mr. Elder, you just let me  
12 know and then we'll take a short break so you all can go to  
13 your next event. Okay.

14 Why isn't the JCCP enough? Why should you be in this  
15 case, too?

16 **MR. CARTMELL:** I feel like there is great  
17 collaboration going on. I think we personally are going to be  
18 filing a lot cases in the MDL in the future. And I think it  
19 will foster, you know -- help foster collaboration between the  
20 JCCP and the MDL, so I just feel like I want to help, you know,  
21 lead the case against the government entities because, you  
22 know, we represent so many clients, and we feel strongly that  
23 these are very important cases.

24 And I will work in the JCCP, but I've talked with the JCCP  
25 co-leads, as well as the co-leads from the MDL and was asked to



1 file an application here to work as the government entity  
2 co-lead with Mr. Weinkowitz, who I've worked exclusively and  
3 extensively with in the past, and so I would really appreciate  
4 the opportunity to do it in the MDL as well, Your Honor.

5 **THE COURT:** And how many people are already -- on the  
6 steering committee here are also on the steering committee or  
7 leads in the JCCP? Is there any overlap at this point?

8 Maybe -- Mr. Seeger, do you know? At the mic because my  
9 court reporter is remote.

10 **MR. SEEGER:** There is overlap, Your Honor. I couldn't  
11 tell you the names right now, but a lot of the firms that have  
12 been appointed here have a colleague, a partner, who was also  
13 involved in the JCCP as well. And that was really maybe not  
14 the smartest way but the way to sort of fully coordinate the  
15 State JCCP with this case.

16 **THE COURT:** All right. Okay.

17 Mr. Cartmell, anything else you would want me to consider?

18 **MR. CARTMELL:** I guess, Your Honor, I'd like -- you  
19 know, I totally understand the idea that you want to give  
20 opportunities to younger attorneys, to minorities, to women and  
21 all that, and I -- you know, I'm a white male. I obviously  
22 can't help that, but I do feel strongly about helping --

23 **THE COURT:** You should understand, I don't have  
24 anything against white males.

25 **MR. CARTMELL:** I know you don't.

1           **THE COURT:** I'm married to one.

2           **MR. CARTMELL:** I guess my point is this: I feel like  
3 all I can do is help with that, and I have committed to that  
4 over my career, and I will commit to that here, if appointed,  
5 Your Honor. Thanks.

6           **THE COURT:** The other issue, again, that I'm concerned  
7 about is geographic, and that's why you saw that in there.  
8 It's not just -- it's not just a question of experience; it's a  
9 question of geography and other things as well.

10           So there's lots of issues that go into the question of  
11 diversity.

12           All right. Thank you, sir.

13           **MR. CARTMELL:** I appreciate it. Thanks, Your Honor.

14           **THE COURT:** Mr. Weinkowitz.

15           Okay. We are going to take a couple-minute break here.  
16 The students are going to leave.

17           Thank you for coming in today. I hope this was -- I hope  
18 you found it helpful.

19                           (Recess taken at 11:58 a.m.)

20                           (Proceedings resumed at 12:00 p.m.)

21           **THE COURT:** Okay. All right. Let's go back on the  
22 record.

23           It is just a total coincidence that members of the court  
24 had scheduled that high school group to come in today, so we  
25 just thought, you know, this involves their lives, let's bring

1       them in here to listen.

2               **MR. WEINKOWITZ:** The audience of expert witnesses.

3               **THE COURT:** Okay. So, Mr. Weinkowitz.

4               **MR. WEINKOWITZ:** Good afternoon, Your Honor. Michael  
5 Weinkowitz, Levin, Sedran & Berman, in Philadelphia.

6               It's actually nice to appear in front of you. If you'll  
7 recall, the last time we did this, I was on the Zoom with  
8 COVID.

9               **THE COURT:** Yes. Now I remember.

10              **MR. WEINKOWITZ:** Thank you for the appointment to the  
11 plaintiffs' leadership committee. I appreciate that.

12              And I would like to thank the co-leads who had the trust  
13 and confidence in recommending me to be a co-chair of the  
14 government entity committee.

15              My firm currently has eight cases, as I've indicated on  
16 the form. We have about ten more cases that will be filed.  
17 Those cases are located -- those school districts are located  
18 in Pennsylvania and New Jersey.

19              In the JUUL litigation, I represented both plaintiff --  
20 individual plaintiffs and school districts, the same school  
21 districts. The vast majority, as you heard, of that litigation  
22 is resolved.

23              I was a member of the very diverse trial team that tried  
24 the San Francisco Unified School District case in front of  
25 Judge Orrick, with Mr. Cartmell and Ms. Hazam's partner, Sarah

1 London. I was on the trial team, as I told you, in November of  
2 2022. I got the short straw of deposition designations, which  
3 I thought went pretty well at trial, including not just the  
4 ones that -- depositions that I, in fact, took.

5 My work in JUUL was co-chair of law and briefing and also  
6 co-chair of the discovery committee, and that work included  
7 both individual cases and the school district cases. And I  
8 think it's important to have somebody that's involved in both  
9 aspects of the case for cohesion among those different  
10 tranches.

11 Since you've appointed me to the plaintiffs' leadership  
12 committee, I have -- the leads have asked me to do a number of  
13 projects related to the school district cases. I have  
14 organized and finished, finally, a 50-state survey of nuisance  
15 law. Many of the lawyers in this firm and many of the -- in  
16 this courtroom and many of the lawyers that are applying did  
17 excellent work, and we have that finished, and hopefully that  
18 will be good to go when the motions to dismiss are filed.

19 I've also --

20 **THE COURT:** So you only need a week to respond.

21 **MR. WEINKOWITZ:** Well, I do have a chart, Your Honor.

22 One of the other things that I've done is I've worked with  
23 the school district attorneys in the JCCP, and I really do  
24 think it's important that we coordinate between the two  
25 jurisdictions so that we have overlap and we have some

1 efficiency between the two jurisdictions, and I think I've --  
2 I've sort of done that.

3 The other thing I've done is we've put together a proposed  
4 plaintiffs' fact sheet for the school districts. We have sent  
5 that over to the defendants, and that's in conjunction with the  
6 JCCP. That fact sheet was based, in large measure, on the JUUL  
7 fact sheet.

8 **THE COURT:** So address the fact that -- some of the  
9 applicants have hundreds of cases. You don't have very many.

10 **MR. WEINKOWITZ:** That is correct.

11 **THE COURT:** How should I weigh that?

12 **MR. WEINKOWITZ:** Well, I represent two school  
13 districts, the Freehold School District and another school  
14 district in New Jersey that has a significant number of  
15 students, so sometimes it's not the number, but it's also which  
16 school districts you have.

17 The school districts represent thousands and thousands of  
18 children and have multiple, multiple schools in those districts  
19 in New Jersey. So it's not necessarily the number. It could  
20 be the size, and it's -- what I would say is that my experience  
21 in JUUL, from beginning to end, in different various areas, I  
22 think, would lend itself to be on the committee and to lead  
23 others in the committee. But I don't have as many as others,  
24 that's correct.

25 I think it's important to have LBGTQ+ representation on

1 the school district committee. Schools are struggling to  
2 balance children that are coming out and using social media as  
3 an avenue for some good stuff, but they're also struggling with  
4 the addiction in the day-to-day operation of the school. I'm a  
5 member of the LGBTQ+ community, and I think that I would bring  
6 to the committee that perspective.

7 Unless you have any questions for me --

8 **THE COURT:** So how much time have you given to the  
9 underlying case, and, again, this is -- I don't have  
10 information from you on the docket for this group that I pulled  
11 off the -- for preparation in today's proceedings. Remind me,  
12 is it a law firm? Is it you as an individual? How much time  
13 are you dedicating?

14 **MR. WEINKOWITZ:** My firm is Levin, Sedran & Berman in  
15 Philadelphia, Pennsylvania. I am dedicating one hundred  
16 percent of my time to this case. I have a number of associates  
17 and paralegals that help me, and we've been doing mass tort  
18 cases for 50 -- 40, 50 years, going all the way back to the  
19 diet drug days. So one hundred percent of my time is dedicated  
20 to this case, Your Honor. Has been since you appointed me,  
21 except for the little bit of a wrinkle when I went to trial in  
22 the San Francisco Unified School District case before  
23 Judge Orrick for six -- I think it was five weeks, Tom? Five  
24 weeks.

25 **THE COURT:** From your perspective, when could you get

1 a Master Complaint on file?

2 **MR. WEINKOWITZ:** We could get a Master Complaint on  
3 file by December 18th, Your Honor, the date that we proposed.

4 **THE COURT:** And will it look different from the  
5 filings that I have?

6 **MR. WEINKOWITZ:** Well, we are studying your order.  
7 It's a long order, and we're trying to figure out strategically  
8 how we would implement that order into a Master Complaint with  
9 the idea that we would have to -- that the causes of action and  
10 the way the school district cases are, they're quite different,  
11 but it -- it would look similar but maybe slightly different.  
12 Boy, that was a sort of obvious phrase. But it -- it will be  
13 similar, Your Honor.

14 And I think that the causes of action that would go into  
15 the Master Complaint would probably be limited to negligence  
16 and nuisance, and in the Short Form Complaint for the  
17 government entities, I would propose that there would be -- if  
18 any government entity wanted to bring a different cause of  
19 action, just like a Short Form Complaint in personal injury,  
20 they would be able to bring a separate cause of action in the  
21 Short Form Complaint, and that what would be litigated in the  
22 first instance on the motion to dismiss would be the nuisance  
23 and the negligence claim.

24 **THE COURT:** Okay. Thank you.

25 **MR. WEINKOWITZ:** Thank you, Your Honor.

1           **THE COURT:** All right. I have Anne Marie Murphy.

2           **MS. MURPHY:** Good afternoon, Your Honor. Anne Marie  
3 Murray. I'm a partner at Cotchett, Pitre & McCarthy. I'm  
4 joined by my partner, Karen Swope. I'm in our Burlingame  
5 office. Ms. Swope is in our Seattle office.

6           And I would like to be considered for leadership in the  
7 school district cases. Our firm has decided that we are going  
8 to be solely focused on representing the interests of the  
9 school districts, which I think is of critical importance. Not  
10 suggesting that there's anything wrong with a decision by some  
11 to participate in multiple tracks with the personal injury  
12 claims as well as the school districts, but there are going to  
13 be differences in the way that the cases are handled and worked  
14 up. There will be differences, for instance, with the expert  
15 witness needs of the case. And there will be differences of  
16 opinion, probably, that need to be discussed, you know, in a  
17 fair manner about which cases go first, which cases go first to  
18 trial, etc.

19           And if -- so fortunately at the end of the day to get to  
20 bellwether, so it would behoove the schools to have separate  
21 representation or focused representation, and if we ever get to  
22 a discussion about resolution of the case, that's where I think  
23 there could be clear conflicts when a firm is trying to meet  
24 both personal injury and school district claims.

25           I would also ask that the Court consider, as I think



1 Your Honor is doing, the diversity of the membership on the  
2 school district committee or leadership panel, and that type of  
3 inner diversity should be diversity in multiple different ways,  
4 the makeup. I would hope that we have, for instance, some  
5 leadership for the school district cases, and I -- I could go  
6 off on a sidetrack and I won't on why I think we have an  
7 important role in and voice in the school district social media  
8 issues.

9 And then I think that there should be some diversity also  
10 in amount of experience and whether or not firms have had co --  
11 they've been in leadership together on other cases and sort of  
12 interlocking leadership between, for instance, opioids, JUUL  
13 and this docket.

14 I've had cases in the JUUL docket as well as opioids, and  
15 I bring to this proceeding the perspective of somebody who was  
16 not in leadership, not that I have any gripes per se to air  
17 today, but I would be very focused on best practices in MDL  
18 proceedings, and those include making sure that there is a good  
19 information flow to the firms that are not in the -- they have  
20 not been selected in leadership so that they are able to fully  
21 inform their own clients about developments in the case. I  
22 think that's of critical importance, and it can be lost in a  
23 very large-scale docket like this one.

24 So I would be very honored if there is a place for me to  
25 participate in the school district leadership.

1           We have seven cases on file representing eight plaintiffs:  
2           The San Mateo Board of Education plus local school districts.  
3           Currently filed cases are all here in or nearby in San Mateo  
4           County. And we have another at least two that we're going to  
5           be filing, one of which is in Southern California.

6           **THE COURT:** So you put on here that you think there  
7           should be RICO or conspiracy claims. Why?

8           **MS. MURPHY:** We think that's supported. We've pled  
9           RICO, as have other firms. That was a -- whether those claims  
10          go forward is an issue that needs to be up for discussion once  
11          the leadership is set. We haven't had advanced discussions.  
12          We are flexible about working properly with the others in  
13          leadership to decide if those claims should or should not go  
14          forward.

15          **THE COURT:** If I appointed you, part of me feels like  
16          that would make -- I've got California firms, so why should I  
17          have a second?

18          **MS. MURPHY:** Well, California is a big state. We've  
19          have had a role in social media litigation. We are here local  
20          to the Court here. We're able to fully participate easily in  
21          the proceedings and be available to -- for the case -- for the  
22          case. I also participated in another common benefit work on  
23          the 50-state survey, and our work was specific to other states  
24          not just -- not California.

25          **THE COURT:** And what about any role in the JCCP?

1           **MS. MURPHY:** No role in the JCCP. We have no cases  
2 currently filed in the JCCP. We have we been fully focused on  
3 this MDL proceeding.

4           **THE COURT:** Anything else you want me to consider?

5           **MS. MURPHY:** No, Your Honor. Thank you for the  
6 opportunity.

7           **THE COURT:** Thank you.  
8 James Cecchi.

9           **MR. CECCHI:** May it please the Court, James Cecchi,  
10 Carella Byrne, on behalf the School District of Chathams and a  
11 variety of others. Thank you, Your Honor, for giving us the  
12 opportunity to speak today.

13           The skill set that I would emphasize that are highlighted  
14 in my application -- I think one of the hallmarks of  
15 representing the school districts -- and to your request to  
16 Ms. Murphy, I only represent school districts. I'm not in the  
17 JCCP. My clients' cases are only filed here. We have other  
18 cases on retainer. We were awaiting Your Honor's decision to  
19 file those additional Complaints to fully digest the opinion to  
20 make sure we pled as best as we can. And we anticipate other  
21 clients, particularly from our opioids engagement, coming  
22 onboard.

23           As Mr. Seeger indicated, I have been active in trying to  
24 organize the group of lawyers on the plaintiffs' side who  
25 represent school districts across the country. I think one of

1 the attributes that I would bring to leadership here is the  
2 ability to lead and get people with strong viewpoints and  
3 perspectives to compromise, and I think that's particularly  
4 important when you're representing local governments or school  
5 districts.

6 There is an aspect -- and I learned this in opioids -- we  
7 had one-hundred percent participation, and I was solely  
8 responsible for bringing all of the subdivisions in New Jersey  
9 onboard. That involved a lot of collaborative, I'll call it,  
10 politic work to get everybody to work together to compromise  
11 and to see the bigger picture. And I think I have that  
12 school -- that capability. I've been appointed in other cases,  
13 sort of as the plaintiffs' liaison to bridge the gaps between  
14 various plaintiffs' lawyers who have -- represent different  
15 stakeholders. So I think that's an important skill set I  
16 bring.

17 I was an Assistant U.S. Attorney under Mike Chertoff, who  
18 was a great mentor and teacher. I think I have a great skill  
19 set in terms of investigating doggedly the claims of my client.  
20 That skill set, I think, was utilized well in the Volkswagen  
21 case where I, with some of my colleagues who are here today,  
22 developed the document destruction case against Bosch. And  
23 there's a lot of technology at issue here. A lot of dogged  
24 investigative work will take place.

25 My cases are all in New Jersey, Judge. I think it's a

1 good thing to have a representative --

2 **THE COURT:** Well, I already have Mr. Weinkowitz.

3 **MR. CECCHI:** Are you from Jersey or Philly, Mike?

4 **MR. WEINKOWITZ:** Philadelphia.

5 **MR. CECCHI:** Philadelphia.

6 **THE COURT:** Well, Pennsylvania and New Jersey is what  
7 he put on his form in terms of his clients.

8 **MR. CECCHI:** You know, Judge, I was going to talk to  
9 him about representing a school district in New Jersey. I  
10 don't think that's appropriate.

11 But, no, we draw a line at the Raritan River. South of  
12 the Raritan is Philadelphia, Pennsylvania --

13 **THE COURT:** You understand that most of the Northeast  
14 will fit in Riverside County in California.

15 **MR. CECCHI:** Yes. But some of my clients, Judge, are  
16 the most densely populated counties in the nation. In fact,  
17 northern New Jersey, if it were a state, would be the most  
18 densely populated state. Something like -- opioid clients who  
19 are going to file these cases -- Essex County, New Jersey;  
20 Bergen County, New Jersey -- have vastly more citizens than  
21 many states, and their school districts are similarly sized.

22 So to answer one of your questions to one of my  
23 colleagues, I think the Complaint, the Master Complaint, which  
24 we've been thinking about -- and we have been working with  
25 Mr. Weinkowitz and others on this survey -- is going to be

1 impacted, obviously, by Your Honor's decision, which we're  
2 diligently digesting because there's product liability laws in  
3 some states that as a result of the decision, those claims may  
4 not be -- those public nuisance claims may not be as viable had  
5 Your Honor ruled in a different way. So we have to fully  
6 digest that, integrated into the Amended Complaint.

7 The last thing I would want to say, Judge, I wanted to  
8 point out some public service that I've been engaging in since  
9 the year 2013. And that is in 2013, Cory Booker was elected  
10 Senator, and I created and formed his judicial selection  
11 committee. And the charge we were given was to make sure that  
12 the candidates and bench look like the citizens they're  
13 serving, and I'm proud to say I think we've succeeded, and I've  
14 worked towards creating an incredible amount of diversity on  
15 our bench, including the first Muslim American who became an  
16 Article III judge. We are in the process of moving another  
17 candidate to the Third Circuit, who is a Muslim American.  
18 We've moved the first Latinx through -- Latina through. We  
19 have more female judges in our district as a consequence of our  
20 work than any other district, I think, in the nation, so I'm  
21 proud of that background, and I think it represents my  
22 commitment to diversity.

23 I thank Your Honor for considering my application.

24 **THE COURT:** Thank you.

25 **MR. CECCHI:** Thank you.

1           **THE COURT:** Derek Loeser.

2           **MR. LOESER:** Good afternoon, Your Honor. Derek  
3           Loeser. There's lots of different ways to say it incorrectly  
4           and yours was kind, so thank you.

5           I'm from Keller Rohrbach, which is based in Seattle, and  
6           I've submitted an application as well for a leadership  
7           position.

8           Our first client in this case was the Seattle Public  
9           School District. They were the first school in the country,  
10          the district in the country, to file a case against social  
11          media companies, and they've really led the charge, encouraging  
12          other schools to join.

13          We have five cases in the MDL. We have 25 cases in the  
14          JCCP. And in looking at the numbers, there is now over 200  
15          cases in the MDL, and there's about 280 school district cases.  
16          And so all of the firms --

17          **THE COURT:** I have 419.

18          **MR. LOESER:** School district cases.

19          **THE COURT:** School district cases, I don't know.  
20          Total --

21          **MR. LOESER:** That's how the numbers break down. And  
22          there are a number of firms, including mine, that is involved  
23          in the JCCP. My partner, Dean Kawamoto, shares a co-lead role  
24          with Mr. Cartmell, and my firm has been doing a lot of work in  
25          the JCCP in collaboration and with the MDL and for use in both

1 the MDL and the JCCP.

2 In terms of my own qualifications, Your Honor, this is not  
3 a new type of case for me or my firm. I've been very involved  
4 in public nuisance litigation over a number of years. I had a  
5 significant amount of work in the opioid MDL, served on a  
6 variety of committees, and think I might win the prize for the  
7 most different types of committees in that case, and, really,  
8 we applied the firm and its resources fully to that case. I  
9 was on the law and briefing committee, the expert committee,  
10 led the litigation against one of the major defendants in that  
11 case, which was successful. Mallinckrodt was the defendant.  
12 And also worked on the Wal-Mart case. So a tremendous amount  
13 was learned by my firm and by me in that litigation.

14 In the JUUL litigation, my partner, Dean Kawamoto, was  
15 co-lead appointed by Judge Orrick, and he was primarily  
16 responsible for the government cases. And I supported him in  
17 that role. Took a deposition of the CEO of Altria, which was  
18 used significantly at trial.

19 One of the unique things about my firm is when we get  
20 appointed to a position, we fully support each other, and we  
21 apply ourselves to make sure that the work is done well and is  
22 done cooperatively, and I've worked with all of these lawyers  
23 here and in the room, and I -- my firm prides itself and I  
24 pride myself on getting along well with my colleagues and  
25 working to find sensible solutions to complex problems.



1           One other experience, Your Honor, that I've flagged in my  
2 application, which I think is important, I was appointed  
3 co-lead counsel by Judge Chhabria in the Facebook-Cambridge  
4 Analytica MDL. That case was a massive undertaking, and it was  
5 successful. It recently -- Judge Chhabria recently granted  
6 final approval of that settlement. It was \$725 million, which  
7 is the most that Facebook has ever paid to resolve a class  
8 action.

9           I think what's important about that case for this case is  
10 the amount that I learned and my firm learned about how to  
11 conduct discovery against a social media company, which is  
12 complex. The systems are complex. It requires experts to  
13 understand both what's produced but also how to get what's  
14 produced. And I think as Your Honor may know, that case was a  
15 bit of a rocky road. We fought against some defense tactics  
16 that we thought and Judge Chhabria agreed were questionable and  
17 inappropriate. And so I think from that -- hopefully none of  
18 that would happen here. I get the sense from being in your  
19 courtroom that that would probably be a mistake. But it was a  
20 tremendous learning experience for us and for our team for how  
21 to keep going in the face of some very disruptive and difficult  
22 practices.

23           So I know from litigating against a social media company  
24 that they have some advantages when it comes to knowledge of  
25 their systems, and you really got to ask the right questions

1 and you got to ask the right people and stick with it because  
2 there's a lot of confusing, complex technical information  
3 that's produced in response.

4 I think, Your Honor -- my reason for being here and  
5 wanting to be involved starts with when we filed our first  
6 case. I have talked to all of the co-leads and many others  
7 that you already have appointed -- and you've appointed a fine  
8 group of lawyers -- about the need to have representation of  
9 these school districts that is focused on them, that will take  
10 care of their interests --

11 **THE COURT:** And I don't disagree with that.

12 **MR. LOESER:** Yeah. And it's been a many-month  
13 process, and I'm very happy -- and thank you so much,  
14 Your Honor, for the opportunity to be here and talk about this  
15 because my efforts in these conversations, which many of them  
16 may have ultimately found perhaps a little redundant, was,  
17 look, let's create something where the school districts are  
18 taken care of, and I think Your Honor agrees with that, and I  
19 would simply ask that I be included in that effort.

20 **THE COURT:** Okay. Thank you.

21 **MR. LOESER:** Thank you, Your Honor.

22 **THE COURT:** Aelish Baig.

23 **MS. BAIG:** Good afternoon, Your Honor. I'm Aelish  
24 Baig with Robins, Geller, Rudman & Dowd. Thank you for giving  
25 us the opportunity to speak here today.

1 I think that the enormity of the task is certainly not  
2 lost on me, not lost on most of those here. Every aspect of  
3 this litigation against multiple defendants is going to require  
4 adequate staffing simultaneously, as we just heard today, and  
5 most, if not all, aspects I have worked on in the opioid  
6 litigation, many of them also in the JUUL, in the McKinsey  
7 litigation.

8 Our firm was appointed to the plaintiffs' executive  
9 committee in the opioid litigation. I personally was appointed  
10 in the JUUL and in the McKinsey litigation. But in opioids,  
11 for example, for the last six years, I was appointed to so many  
12 committees there: Law and briefing committee, the  
13 bellwether -- bellwether briefing. It was our clients that  
14 were selected as some of those bellwethers for dispositive  
15 motions so we had to brief that, the legal analysis that went  
16 into selection of bellwethers. We contributed on that front,  
17 too.

18 We were on the expert committee. We were also -- it was  
19 our client who was selected as a bellwether and was tried in  
20 front of Judge Breyer. So I co-led that trial. We took and  
21 defended 40 depositions over the holidays with our colleagues,  
22 Lieff Cabraser primarily, and others. Jennie Anderson was also  
23 involved in that and others at the table. And we tried that  
24 case for almost three months in front of Judge Breyer.

25 I gave --

1           **THE COURT:** Which of the cases?

2           **MS. BAIG:** So that was San Francisco Unified's case  
3 against five opioid defendants. It was against nine of them.  
4 Four settled, you know, well in advance of trial. It went --  
5 it went to -- through opening statements and through the close  
6 of evidence.

7           **THE COURT:** This was the bench trial?

8           **MS. BAIG:** This was the bench trial. Against all five  
9 defendants, settled with four of those, and the remaining  
10 defendant, who did not settle, Walgreens, we achieved a verdict  
11 against Walgreens.

12           I personally took and defended numerous of the witnesses  
13 in that litigation, in the opioid litigation. Our firm was  
14 responsible for the litigation against one of the defendants,  
15 Allergan. I personally took the former CEO's deposition in  
16 that litigation.

17           In JUUL and McKinsey, too, we litigated. That was not  
18 quite as long as the opioid litigation. We just filed final  
19 approval requests for settlement in McKinsey last night.

20           But also I wanted to touch upon the settlement -- the  
21 settlement aspects that we were involved in in the opioid  
22 litigation. My partner, Paul Geller, was appointed to the  
23 settlement committee. I worked with him day in and day out on  
24 that, on settlement implementation. I would say that the  
25 settlement in the opioid litigation -- and this is multiple,

1 multiple defendants nationally for more than \$50 billion. And  
2 the implementation of that settlement was probably one of the  
3 most complex in history. We're still working on aspects of  
4 that.

5 I think that all of this experience makes me a good  
6 candidate to be on the PSC. I work cooperatively,  
7 collaboratively. I work with many of these firms here on these  
8 prior litigations.

9 I do think that diversity is important. I am a mother of  
10 two teenagers of color, and I have witnessed firsthand the  
11 impacts of the defendants -- of the alleged misconduct against  
12 defendants in our community generally and in their peer groups  
13 and in communications with school systems.

14 We represent -- we filed the first action on behalf of a  
15 municipality in this case, Bucks County Pennsylvania. We also  
16 filed, I think, the second school district case on behalf of  
17 Broward, Florida, which is the largest -- sorry, the sixth  
18 largest school district in the country. We recently filed on  
19 behalf of Miami-Dade Florida schools, which is the third  
20 largest school district in the country. We have also filed on  
21 behalf of Marin County.

22 Your -- your pop quiz asked for what others have been  
23 retained, had retention agreements, and I identified there's  
24 one other Northern California entity that has been retained  
25 with a signed retention agreement. There are many others of

1 our clients who are still considering, some who wanted to see  
2 what happened on Section 230, but many who I expect will be  
3 filing in the future. We represented many in opioids, in JUUL,  
4 in McKinsey, including -- I provided a list in my letter.

5 Beyond that, I think I would just thank you, Your Honor,  
6 for your consideration, and if you have any questions.

7 **THE COURT:** No. I'm good. Thank you.

8 **MS. BAIG:** Thank you.

9 **THE COURT:** Okay. Ms. Weaver.

10 **MS. WEAVER:** Good afternoon, Your Honor.

11 I did not submit a form because we are not on file yet.  
12 And so we were here today to try to -- I haven't retained  
13 anybody, so not knowing where the process is, I don't want to  
14 waste the Court's time. If you're making a decision today,  
15 we're not prepared.

16 **THE COURT:** I'm not making a decision right this  
17 minute. I will make a decision quickly. I'm going to send out  
18 some emails to judges with whom people have -- in front of whom  
19 they've appeared and get some feedback in terms of what other  
20 judges think.

21 So you can submit something on the record, but I'm not  
22 going to have another oral -- you won't have another oral  
23 opportunity, so if you want to say something, now is the time  
24 to do it.

25 **MS. WEAVER:** I will be brief because that's only fair.

1 There are a lot of lawyers in this room that have filed in this  
2 case earlier.

3 I do think there are a lot of talented lawyers in this  
4 room, and I've worked with them, and I've learned from working  
5 with them.

6 I think that in particular, my firm is very, very  
7 selective. We are small. We are fierce. That is why we have  
8 not filed. We have the benefit of Your Honor's order to review  
9 now in the underlying case. And when we put clients in cases,  
10 we litigate them.

11 If we file in this case with the school district, I will  
12 put all of my effort into making sure that we get something for  
13 those clients. School districts are overworked, underpaid,  
14 under siege, and so particularly with regard to public  
15 entities, when we represent them, we fight for them very hard,  
16 and we try to figure out how to minimize the pain of  
17 involvement in litigation like this. So that's what I would  
18 bring.

19 Also some level of diversity. We're obviously committed  
20 to it. I know the Northern District has been fabulous in  
21 thinking about diversity in appointment. I've been gratified  
22 to work with many of the lawyers that have benefited from the  
23 efforts of the court here to do that.

24 So I would say if -- we have been speaking -- we have a  
25 new office in Austin, Texas. We're speaking to entities there.

1 We have an office -- obviously we're based in New York, and  
2 then I'm here in Oakland.

3 So, again, I cannot speak to representation at this time.  
4 I'm ill-prepared, and I apologize, Your Honor, but thank you  
5 for the opportunity.

6 **THE COURT:** All right.

7 Arthur Bryant.

8 **MR. BRYANT:** Thank you, Your Honor. Arthur Bryant  
9 from Bailey Glasser. I, too, don't have information to fill  
10 out the form, for which I apologize. I'm part of a team of  
11 lawyers working on these cases that saw the applications come  
12 in and asked me to come to this hearing to see whether we  
13 should talk to lead counsel about proceeding, file our own  
14 application, or how to proceed. So I don't have the  
15 information.

16 But who we are preparing to submit for leadership is Cyrus  
17 Mehri of Mehri Skalet. I understand he was here in the last  
18 week on a different case.

19 Members of our team -- let me tell you about the members  
20 of our team a little bit. For Cyrus Mehri, he's with Mehri  
21 Skalet in Washington, D.C. He has been lead counsel in several  
22 major class actions and MDLs involving race and sex  
23 discrimination but also has been actively involved leading the  
24 way for the school districts since the start. He represents  
25 the school districts in the opioid litigation in front of



1 Judge Polster. He's just also representing the school  
2 districts, I believe, in a settlement with McKinsey in front of  
3 Judge Alsup, so he would be the person we would be promoting --

4 **THE COURT:** Judge Breyer?

5 **MR. BRYANT:** I'm sorry. Judge Breyer. I apologize.

6 He would be the person we would be promoting for the  
7 leadership.

8 Other people on the team, Wayne Hogan, Terrell Hogan, in  
9 Florida. I know that we have signed up clients in Florida, but  
10 I don't have the list in front of me to tell you.

11 I know we have already filed in the MDL on behalf of the  
12 school district of Baltimore.

13 Terrell Hogan has great experience in MDLs and class  
14 actions. I know that they were one of the leaders in the  
15 tobacco litigation.

16 Bailey Glasser is headquartered -- the firm I'm now  
17 with -- is headquartered in Charleston, West Virginia in terms  
18 of geographic diversity. Ben Bailey, who would be the leader  
19 of our team in the litigation, has been on the PSC for both --  
20 I think it was the Toyota acceleration litigation and for the  
21 Volkswagen diesel litigation, both out here.

22 My background is I -- I have never been in a proceeding  
23 like this. The people on my side know that. I spent the last  
24 35 years building a national public interest law firm called  
25 Public Justice from literally me and the receptionist to 43

1 staff and 23 members, all of which, because it was a public  
2 interest law firm, was financed, the vast majority of it, by  
3 membership contributions from primarily plaintiffs' lawyers all  
4 around the country. So I know almost all of these people and  
5 their firms from going to them and asking them to join and  
6 support Public Justice and then working with them on  
7 cutting-edge legal cases.

8 So while I've been involved in class actions and MDLs all  
9 around the country, it's never been in positioning for  
10 leadership positions because Public Justice wasn't involved in  
11 that battle. We were focused on the cutting-edge legal issues  
12 in the case. And what I can tell you is my role in this case  
13 would be to do exactly that. I have experience all around the  
14 country from the trial courts to the U.S. Supreme Court.

15 I'm particularly -- was also asked to get involved in this  
16 litigation because of its public interest impact and  
17 possibilities and because I'm actually now representing a -- a  
18 man in Australia, a billionaire in Australia named Andrew  
19 Forrest, who -- fake ads are being run by cyber criminals on  
20 Facebook, and he is so popular in Australia that people are  
21 putting their life savings into ads that he has nothing do  
22 with, and he has sued Facebook just to get them to stop people  
23 from running ads with his name on it because it's harming so  
24 many people. So I've been involved in Section 230 research and  
25 briefing and argument.

1 But I can tell you from Mr. Mehri's background and from  
2 the rest of the team's background and certainly from my  
3 background the sort of one absolutely unique thing is you would  
4 be adding to the team -- adding to the leadership group with  
5 significant experience in public interest litigation and  
6 advancing -- making sure that the school districts are taken  
7 care of, not just monetarily but the best way possible to  
8 advance the public interests.

9 And I don't have the form, like I said, but I can go back  
10 and have them submit the form through whatever process you'd  
11 like.

12 **THE COURT:** Okay. So if you want to submit something,  
13 no later than noon tomorrow Pacific. Okay?

14 **MR. BRYANT:** Yes, Your Honor.

15 **THE COURT:** All right.

16 Mr. Weaver -- I think that's it; right? Did I get  
17 everybody? I think so.

18 All right. Mr. Weaver, question for you.

19 In terms of -- I'm sorry. Seeger, not Weaver.

20 In terms of how the structure is currently operating, what  
21 are you looking for or what can the structure manage without  
22 being bulky, that is, efficient? I'm looking for the efficient  
23 size.

24 **MR. SEEGER:** Yeah. We know your views on that, Judge.  
25 You've made that clear.

1 Well, two responses. One is -- I want to make this  
2 clear -- we see it as a subcommittee in some respect because  
3 it's really, you know -- I think it's a sub-piece of the case  
4 that is before you.

5 Secondly, the -- there -- it's a very high quality of  
6 lawyers who just stood up here and have asked for the job.  
7 Should the sub --

8 **THE COURT:** It's a subcommittee, but their claims are  
9 distinctly different from the other claims. I mean, I don't  
10 know what's going on with this notion of RICO or anything like  
11 that, but public -- the public nuisance, right, is distinctly  
12 different --

13 **MR. SEEGER:** That's the one, yeah.

14 **THE COURT:** -- from the -- from the -- from the other  
15 18 claims that are in the Master Complaint.

16 **MR. SEEGER:** Correct. Yeah.

17 So -- you know, Judge, I guess the way we saw it -- let me  
18 start there, because I'm not hedging on giving you a firm  
19 answer to your question, but the way we saw it was not a very  
20 large committee, frankly. I -- if I had to throw out a number  
21 without speaking to Prevan and Lexi, I think five or six is the  
22 right number, which would then beg the question, well, if  
23 you're asking for three co-chairs, that is very top heavy for a  
24 subcommittee.

25 There are a lot of reasons for doing it. I think each of

1 the three that spoke to you bring different skill sets and  
2 would provide benefits for those reasons. You know,  
3 Mr. Cecchi's -- you heard his presentation about the work he's  
4 done in trying to lead the informal committee that's been  
5 around. I think that's very valuable.

6 So that's kind of where I come out. Five or six, I think,  
7 is the right number. And that doesn't mean that people that  
8 wouldn't be appointed to the committee would be abandoned. We  
9 would still be communicating with people. I communicate with  
10 people throughout the country who haven't been appointed. It's  
11 our responsibility to do that.

12 **THE COURT:** Okay. All right. Let's talk about  
13 discovery.

14 This might be -- we may take a short break here.

15 Pam, would a short break be good for you?

16 **THE COURT REPORTER:** Yes, Your Honor.

17 **THE COURT:** Okay. It's 12:41. Fifteen minutes.  
18 Okay? Remember what I said last time. Make sure you're back  
19 here on the record in 15 minutes.

20 We'll stand in recess.

21 (Recess taken at 12:42 p.m.)

22 (Proceedings resumed at 12:55 P.m.)

23 **THE COURT:** Okay. Discovery. Anybody on the defense  
24 side talking about discovery?

25 **MS. HAZAM:** Lexi Hazam on behalf of plaintiffs.

1           **MS. SIMONSEN:** Ashley Simonsen from Covington &  
2 Burling on behalf of the Meta defendants.

3           **THE COURT:** Go ahead.

4           **MS. HAZAM:** Your Honor, there were a few issues  
5 touching upon discovery in the parties' status report. We can  
6 take them in order.

7           One came -- the status report was, of course, submitted in  
8 advance of Your Honor's order so there was discussion of the  
9 discovery stay. We noted in Your Honor's order that the Court  
10 has indicated that that stay would be lifting, so I don't know  
11 if you need us to further discuss that matter.

12           We also addressed in our status report plaintiffs' pending  
13 requests for --

14           **THE COURT:** Let me -- because I'll issue an order  
15 after this, but discovery is lifted at this point. The stay is  
16 lifted. I don't think that's a surprise.

17           Go ahead.

18           **MS. HAZAM:** Thank you, Your Honor. That was our  
19 understanding.

20           We had also raised in our status report the issue of the  
21 defendants refreshing the productions they had made last  
22 January pursuant to the Court's Discovery Order No. 1. Those  
23 were productions of documents that had been produced to State  
24 Attorneys General as part of their investigations into issues  
25 akin to those in this case, namely, addiction of youth through

1 use of defendants' platforms.

2 We had asked the defendants to refresh those productions  
3 in light of seeing various citations in the State AGs'  
4 Complaints, both the one filed in the MDL and State AG  
5 Complaints that had been filed in various state courts.

6 We have had meet-and-confers on that matter. They have  
7 been productive with two of the defendants. I believe we  
8 already have an agreement with regards to this with Defendant  
9 Snap, who will be refreshing the production in short order.

10 We've had productive meet-and-confer with Defendant Meta  
11 on this matter and I believe will reach an agreement that also  
12 results in a refreshed production.

13 We are not there with the other two defendants. To date,  
14 Defendant TikTok has declined to agree to refresh the  
15 production or to provide plaintiffs with unredacted copies of  
16 other Complaints against TikTok, such as the Complaint pending  
17 in Utah state court brought by the State AG for Utah, which  
18 also deals with issues of youth mental health harms and  
19 addiction to social media. We are continuing to confer with  
20 them on that. I'm not sure if we have the final word; however,  
21 thus far it has not been productive. We note that with  
22 discovery listed, we could simply propound discovery for this,  
23 but we believe it should not be necessary in light of  
24 Your Honor's former discovery order.

25 And then we have a request to YouTube. It's more recent

1 and so have yet to engage in meet and confer. We don't know if  
2 YouTube through Google has made any such production.

3 **THE COURT:** Lawyers for TikTok and YouTube, response.

4 **MS. PIERSON:** Thank you, Your Honor. Andrea Pierson  
5 from Faegre Drinker on behalf of TikTok.

6 Your Honor, it's TikTok's position that discovery requests  
7 at this juncture, particularly made in the informal way that  
8 plaintiffs have made it simply by email, that they're premature  
9 and that any requests for documents should come through a  
10 formal process once that process begins.

11 Just to clarify the request before TikTok, Your Honor, on  
12 November the 2nd, the plaintiffs requested that TikTok produce  
13 all confidential documents, transcripts and the sealed  
14 Complaint filed in the State of Utah, produced or created  
15 within the AG investigations, and it's our view that that  
16 request is overly broad, unduly burdensome, and premature, and  
17 that it should be denied for three reasons.

18 First, as we noted, it's not been part of a formal  
19 discovery request. Instead this request was made by email  
20 initially on November the 2nd. There has been one  
21 meet-and-confer on the substance of that. That occurred  
22 yesterday.

23 During that meet-and-confer, the scope of the plaintiffs'  
24 request was -- was unclear, and the plaintiffs' lawyer told us  
25 that they would clarify with leadership what the scope should



1 be. We're waiting to hear back, but we're in the very early  
2 stages of conferring with plaintiffs on that matter, and we  
3 intend to continue.

4 **THE COURT:** What is the problem with producing the  
5 unredacted version of the Complaint?

6 **MS. PIERSON:** The Complaint was filed by the Attorney  
7 General in Utah under seal by the State. There is a pending --

8 **THE COURT:** Is there an objection to the Utah State AG  
9 producing the unredacted version under a protective order?

10 **MS. PIERSON:** Yes.

11 **THE COURT:** On what grounds?

12 **MS. PIERSON:** Your Honor, there is a process that's  
13 happening currently in the Utah court to continue to maintain  
14 the redacted portions of that Complaint under seal. Subject to  
15 the -- the jurisdiction and ruling of that court, until the  
16 Complaint is unsealed, if and when it's ever unsealed in Utah,  
17 it would be inappropriate to produce it in connection with this  
18 litigation.

19 **THE COURT:** Why?

20 **MS. PIERSON:** There is material that that court is  
21 considering as confidential and whether it should remain  
22 confidential. I'm not at liberty to talk about the material  
23 that's contained in that redacted Complaint.

24 **THE COURT:** If the Utah State Attorney General has no  
25 objection to producing it under protective order to plaintiffs'

1 attorneys here, what is TikTok's objection?

2 **MS. PIERSON:** TikTok will raise its own concerns with  
3 respect to unsealing the Complaint and the contents of the  
4 confidential --

5 **THE COURT:** Well, unsealing the Complaint to the  
6 public is very different.

7 **MS. PIERSON:** Understood.

8 **THE COURT:** I'm talking about a narrow production  
9 under a protective order.

10 **MS. PIERSON:** In the absence of a formal discovery  
11 request and an analysis of whether the materials referenced in  
12 that Complaint are relevant to this proceeding, we're not able  
13 to agree to the production of that Complaint, even if it  
14 remains highly confidential.

15 **MS. HAZAM:** Your Honor, if I may --

16 **MS. PIERSON:** I think the broader point, though,  
17 Your Honor, from our perspective is this. You may recall that  
18 Your Honor considered a similar request from the plaintiffs  
19 about a year ago, and at that time, Your Honor reviewed all of  
20 the CIDs and the requests for documents. There were over 279  
21 requests for documents that Your Honor reviewed.

22 In response to that, Your Honor ordered that TikTok should  
23 produce documents responsive to seven of those requests.

24 The request that's been made to my client is without  
25 regard to the Court's order. The plaintiffs characterize it as

1 a refresh, but the requests that we've been posed with is to  
2 produce all of the documents produced in connection with any AG  
3 investigation without that limitation.

4 And you may recall that your Discovery Order No. 1  
5 identified four specific topics that you were looking for as  
6 you reviewed the requests for documents to identify the seven  
7 requests. Keep in mind all of that happened, of course, before  
8 Your Honor's order on the motion to dismiss, which narrowed the  
9 claims against TikTok.

10 The present request that plaintiffs pose, as we understand  
11 it, although as I said, we had what I thought was a productive  
12 meet-and-confer yesterday that would result in -- in some  
13 defining of the scope of the request to TikTok, which is  
14 presently unclear to us, but as we understand the request  
15 before TikTok today, it would require the Court to review  
16 another 200 requests for documents and to consider the scope of  
17 those in comparison to the Complaints as they exist after the  
18 ruling on the motion to dismiss.

19 **THE COURT:** All right. Comments from YouTube.  
20 Someone from Wilson Sonsini?

21 **MS. HARDIN:** Ashley Hardin from Williams & Connolly,  
22 actually, Your Honor.

23 YouTube has not produced any documents to a State Attorney  
24 General in connection with an Attorney General investigation  
25 into YouTube, so that's where the state of it is. And as for

1 any inquiry by the plaintiffs, my understanding is that the  
2 first inquiry we got was at 6:00 last night via email, but  
3 that's the state of -- of YouTube. And we, therefore, have not  
4 engaged in any meet-and-confers with the plaintiffs because it  
5 hasn't been necessary.

6 **THE COURT:** Okay.

7 **MS. HAZAM:** And, Your Honor, now it will not be  
8 necessary. That absolutely is correct that the request was  
9 made last evening. YouTube is differently positioned. It did  
10 not have prior productions and so the question was merely  
11 whether it had any since, and I understand counsel's  
12 representation that it has not.

13 If I may respond briefly to the statements with regards to  
14 TikTok?

15 **MS. HARDIN:** Thank you, Your Honor.

16 **MS. HAZAM:** First, the meet-and-confer that has been  
17 conducted with plaintiffs was conducted by Mr. Weinkowitz, who  
18 is in the room today and could address it, but I want to make  
19 it clear that the request was for documents that relate to  
20 addiction to social media so it was confined to relevant  
21 matters to this litigation. And it was the same request that  
22 plaintiffs made last year -- excuse me -- last January, I guess  
23 it would be -- no. I think it was last year, and then the  
24 production was in January -- that were made pursuant to the  
25 Court's order. And so from our view, we should not have to

1 make a formal discovery request, but instead supplement --

2 **THE COURT:** I think that the question is I -- look, I  
3 looked at all of those things myself, and I ordered a very  
4 limited and targeted production. Has more been produced on  
5 those -- on those particular -- or with respect to the topics  
6 in the -- that I ordered, has more been produced to the  
7 Attorneys General with regard to those topic areas?

8 **MS. PIERSON:** Your Honor, I don't know the answer to  
9 that question, but what I can tell you is that since  
10 January 9th, TikTok has produced over 68,000 documents. The  
11 burden of what plaintiffs are asking without any formal  
12 discovery requests would require TikTok to -- to review 68,000  
13 documents --

14 **THE COURT:** Did you not identify in the production to  
15 the AGs which documents were responsive to which requests?

16 **MS. PIERSON:** The -- the requests are different,  
17 Your Honor. There have been 200 new requests that have been  
18 served and the 68,000 documents are in response to those --

19 **THE COURT:** I don't think we're talking on -- you're  
20 not -- we're not communicating. You all go meet and confer,  
21 and -- and then we can discuss it again.

22 I ordered a production with respect to very specific  
23 requests. To the extent that there were other productions  
24 relative to those requests, they should be produced. And I'm  
25 not -- and there were numerous things that I did not order

1 production on, and I'm not suggesting you have to produce to  
2 that. But if there were ongoing productions with respect to  
3 the ones that I ordered, they should be produced. Do you  
4 understand?

5 **MS. PIERSON:** I do understand, Your Honor. We would  
6 ask, though, for the opportunity to both address this in terms  
7 of formal discovery, as formal discovery proceeds. We'll have  
8 objections, of course, that --

9 **THE COURT:** So -- do -- meet and confer. And I'm not  
10 particularly interested in boilerplate objections. I have  
11 already looked at the requests. The productions have already  
12 been made. And you shall produce.

13 **MS. PIERSON:** Understood, Your Honor. Understood.  
14 The clarification of knowing that it's limited to the  
15 Court's prior request is helpful and not something we knew  
16 before today based on the confers with the plaintiffs.

17 **THE COURT:** Okay. Well, again, go meet and confer.  
18 I'm giving you guidance. Do you understand?

19 **MS. PIERSON:** I do.

20 **THE COURT:** Okay.

21 **MS. PIERSON:** I do.

22 **THE COURT:** Anything else?

23 **MS. HAZAM:** No, Your Honor. I think we understand  
24 your guidance as to that matter.

25 **THE COURT:** And you should understand on the

1 plaintiffs' side, there were numerous -- in fact, the majority  
2 I did not think were relevant to this litigation.

3 **MS. HAZAM:** Understood, Your Honor. We have limited  
4 our requests to those that are responsive to addiction, to  
5 social media, but I understand Your Honor's instructions.

6 **THE COURT:** At least not as of December of last year.  
7 All right.

8 What else do you have?

9 **MS. HAZAM:** With regards to discovery, I think the  
10 coordination order goes to discovery. I think these were the  
11 principal components of it, if your Court would like to discuss  
12 that.

13 **THE COURT:** All right. And that coordination order, I  
14 have to say I did not agree the last time I looked at it, which  
15 was quite a while ago, with plaintiffs' perspective on what you  
16 think Judge Kuhl had ordered. Where does it -- where -- where  
17 is it now with respect to Judge Kuhl, and what, if anything,  
18 are the specific issues that are outstanding at this point? I  
19 mean, there has been no discovery until now --

20 **MS. HAZAM:** Yes, Your Honor.

21 **THE COURT:** -- other than what was previously ordered  
22 in a limited way.

23 **MS. HAZAM:** That's correct, Your Honor. The order  
24 that was issued by Judge Kuhl -- and my colleague, Kelly  
25 McNaab, can speak further to this -- was issued, I believe, in

1 the form of a minute order, and it had three simple components  
2 to it, which are what plaintiffs are seeking here from this  
3 MDL, and it would simply be the mirror image of that order.

4 That order essentially said that documents that were  
5 produced in the MDL would be produced in the JCCP, deemed  
6 produced essentially. And so plaintiffs have essentially  
7 suggested that the reverse apply as well, that the parties seek  
8 to avoid duplicative discovery, which we were tasked with doing  
9 under the federal rules and we would want to include in any  
10 such order. And finally, the last provision is that discovery  
11 should be coordinated, so --

12 **THE COURT:** I think we can all agree that discovery  
13 should be coordinated; right?

14 **MS. HAZAM:** So the parties have --

15 **THE COURT:** Hold on.

16 **MS. HAZAM:** Sorry. Excuse me.

17 **THE COURT:** Correct?

18 **MR. DRAKE:** Yes, Your Honor. Geoffrey Drake, King &  
19 Spalding, for the TikTok defendants.

20 I think we're all in agreement on the spirit of  
21 coordination. I think it's just a matter of a disagreement  
22 about the details of a potential order, not really as much as  
23 it relates to the JCCP, Your Honor, where, indeed, there is  
24 great coordination going on. As Mr. Seeger said, most of the  
25 lawyers here are involved in that proceeding and most of the



1 lawyers in that proceeding are involved in this proceeding.

2 The intent of the coordination order in many respects,  
3 Your Honor, perhaps relates to what may ensue as this  
4 litigation unfolds. At present, there are only four, I think,  
5 lawsuits related to these issues that are pending in other  
6 state courts around the country, three of which have been filed  
7 by Mr. Bergman, who I don't see here today, and one by  
8 Mr. Brewster -- I don't believe he's here today either -- and a  
9 couple more that are pending with motions to remand on file in  
10 Louisiana.

11 And we -- we thought now a good time to have the dialogue,  
12 Your Honor, about how best to try to ensure that these other  
13 state court cases get the benefit of this proceeding and the  
14 discovery that happens here and also as a result, kind of agree  
15 not to go beyond what's going on in this Court or try to end  
16 run this Court in any way and that we just have a coordinated,  
17 steady proceeding going forward.

18 **MS. HAZAM:** Your Honor, that's news to us, that this  
19 is the limited fashion in which the defendants are seeking the  
20 order that they've submitted.

21 The way that related actions and coordinated actions are  
22 defined in that order is much broader, would apply to the JCCP,  
23 would also apply to the State AG actions pending in state  
24 court.

25 Now, the proposed order, both plaintiffs' and defendants',

1 has no force unless it's adopted by the other court. So unless  
2 it's adopted by, for example, Judge Kuhl in the JCCP, it would  
3 not govern. The same would go for actions by State AGs.

4 We could carve out a discussion of solely those other few  
5 actions that exist, but defendants' proposal was much broader  
6 than that and had --

7 **THE COURT:** As I understand, these are lead states who  
8 filed in their own state court --

9 **MS. HAZAM:** Exactly.

10 **THE COURT:** -- right?

11 **MR. DRAKE:** That's correct, Your Honor. There's also  
12 one, as Ms. Pierson discussed -- one AG action filed in a state  
13 court by the State of Utah against TikTok, and then there are  
14 four personal injury cases that are pending in various state  
15 courts and of which I'm aware at least two school district  
16 lawsuits that are currently subject to briefing on motions to  
17 remand, although we believe those will ultimately be sent to  
18 this MDL.

19 But Ms. Hazam is right, the order was not drafted to be  
20 specific only to those particular lawsuits. It was drafted to  
21 concern all related actions. And as Ms. Hazam points out  
22 correctly, it's then up to whether Judge Kuhl wants to adopt  
23 Your Honor's coordination order or not. I'm of the view that  
24 that would be helpful. She may not agree with that. And,  
25 frankly, I do think that without it, we're still in a very good

1 spot in the JCCP with coordination. I don't see a lot of  
2 concerns there. I know Your Honor and Judge Kuhl are speaking  
3 regularly.

4 But I don't know where the litigation is going to go long  
5 term. And traditionally in these types of MDLs, we find it  
6 helpful to try to hammer out what the details might be of a  
7 coordination order early on and then leave it to those --  
8 obviously those different state courts to make a decision about  
9 whether to adopt a version of that order to help govern their  
10 own proceeding.

11 **THE COURT:** Okay. So it appears -- has anything  
12 happened that -- the filings that happened with respect to this  
13 issue were in May. We are now in November. Since then, you've  
14 received a ruling from Judge Kuhl on the first round of motions  
15 to dismiss. You've received a ruling from me on the first  
16 round of motions to dismiss.

17 Where are we on the coordination? Has it just -- did it  
18 just stop in May? And if it didn't just stop in May, where is  
19 the most current articulation of any dispute so that I can look  
20 at the specifics and perhaps -- I -- I'm not really prepared to  
21 give you any answers because I don't have -- I don't know  
22 what's in front of me that is current.

23 **MR. DRAKE:** I might suggest, Your Honor, to that  
24 point -- well, let me first answer your question more directly  
25 and then make a suggestion.

1           Coordination has continued, as I understand it, to --  
2           to -- to continue between the plaintiffs in the JCCP and the  
3           plaintiffs in the MDL, along with the defendants, and as I  
4           mentioned earlier, as I understand it, Judge Kuhl and  
5           Your Honor have been in touch and are coordinating. Nothing  
6           further has --

7           **THE COURT:** But we've not talked about this order.

8           **MR. DRAKE:** Thank you, Your Honor.

9           The -- I believe Judge Kuhl took the view back in May that  
10          a formal order in her court was not necessary and that she had  
11          certain guiding principles. Nothing further has happened on  
12          that point since Judge Kuhl's issued that particular order that  
13          I can recall.

14          **MS. MCNABB:** Yes, Your Honor. Kelly McNabb for the  
15          individual plaintiffs.

16          The order that is operational right now in the JCCP is  
17          Judge Kuhl's May 3rd, 2013 order, and coordination has been  
18          proceeding under those guidelines that Judge Kuhl provided.

19          Nothing has changed in coordination. We continue to  
20          coordinate, as has been mentioned numerous times today. The  
21          coordination has -- is strong. We are in constant  
22          communication between the MDL and the JCCP, which clearly has  
23          the largest number of actions filed. There may be a few state  
24          court actions and then there are the Attorney General state  
25          court actions, which we don't foresee any issues coordinating

1 with those other state court actions outside of the JCCP.

2 So, again, plaintiffs' proposed order, which -- in front  
3 of Your Honor right now was what we filed back in May is  
4 plaintiffs' proposed order that mirrors what Judge Kuhl entered  
5 in the JCCP, which has been working and -- both before the  
6 order in May and subsequently, and then there's defendants'  
7 proposed order which goes far beyond both Judge Kuhl's order  
8 and any other prior coordination --

9 **THE COURT:** She issued a minute order.

10 **MS. MCNABB:** Correct, Your Honor. And as --

11 **THE COURT:** It's not -- it's not a fulsome, thorough  
12 order. It is just -- it was just a set of principles in a  
13 minute order.

14 **MS. MCNABB:** That's correct, Your Honor.

15 And as the guidelines and best practices that -- that  
16 defendants have filed as Exhibit 1 and 2 in their submission to  
17 Your Honor back in May suggest, that coordination can take a  
18 variety of forms. There is not one prescribed way. The key  
19 issue is communication and making sure that the parties are  
20 communicating so that discovery does not include unnecessarily  
21 duplicative requests and depositions, for example.

22 We believe that our proposed order does just that. There  
23 is no need to create procedural hurdles stripping away other  
24 courts' authority to manage the cases before them or dictating  
25 how plaintiffs in those other actions prosecute their cases,

1 which is what defendants' order would do. That would massively  
2 change how coordination has been effectively managed in the  
3 cases thus far.

4 **MR. DRAKE:** May I make --

5 **THE COURT:** Thus far? Discovery just opened so I  
6 don't know what you mean by the term "thus far."

7 **MS. MCNABB:** Although discovery has just opened,  
8 Your Honor, we have been coordinating between the actions with  
9 the protective order, for example, the preservation order, ESI  
10 order. There has been the prior productions. There has been a  
11 lot of coordination, although it has not been under, you know,  
12 formal discovery requests. There are, quote, first-day orders  
13 that we have been working with, including the Plaintiff Fact  
14 Sheet, which is a discovery mechanism used in mass tort cases,  
15 and the parties have been able to do that.

16 **THE COURT:** One of the issues appears to be whether  
17 the JCCP plaintiffs should be required to obtain leave to serve  
18 non-duplicative discovery in the JCCP by demonstrating good  
19 cause as to why such discovery could not have been obtained in  
20 the MDL. Yes or no? Is that still an issue?

21 **MS. MCNABB:** Yes, that is an issue, Your Honor.

22 **THE COURT:** All right. Argument.

23 **MS. MCNABB:** Your Honor, the -- the provision is from  
24 defendants' proposed order in paragraph 11 and then there's a  
25 couple other paragraphs, including 19, that deals with

1 depositions on that issue.

2 The first issue with that is we're talking about  
3 non-duplicative discovery. The plaintiffs or the parties, I  
4 should say, generally in the JCCP are free to propound their  
5 own discovery. It's non-duplicative.

6 There may be reasons why in the JCCP certain discovery is  
7 sought that's not sought in the MDL. So what defendants'  
8 proposed order would require is that plaintiffs -- plaintiffs  
9 or defendants would have to first go to Judge Kuhl and say, We  
10 want to propound discovery. They would have to show that --  
11 that they reviewed the materials that have already been  
12 produced in the MDL -- no problem with that -- and determined  
13 that the discovery was necessary to address issues unique to  
14 the coordinated action. I could see --

15 **THE COURT:** You know what? Let me hear from the  
16 defense first. And I say that because you're making an  
17 argument in response, and I'd like to hear --

18 **MS. MCNABB:** Okay.

19 **THE COURT:** -- the need for why it is you're asking  
20 for what you're asking.

21 **MR. DRAKE:** Well, with respect -- again, Your Honor,  
22 with respect to the JCCP itself, which the plaintiffs are  
23 singularly focused on or not, so that seems to be a disconnect  
24 between the two sides as we discuss the details of a  
25 coordination order. But with respect to any case outside of

1 the MDL, including the JCCP, the draft language in the  
2 coordination order, which is pulled from many exemplars that we  
3 have provided to the Court, contemplate that -- that -- that  
4 the discovery that needs to take place as it relates to the  
5 general liability issues takes place in this proceeding under  
6 Your Honor's guidance.

7 **THE COURT:** But the JCCP plaintiffs are not the same  
8 plaintiffs as they are here.

9 **MR. DRAKE:** That's correct.

10 **THE COURT:** And they're not the same lawyers.

11 **MR. DRAKE:** Well --

12 **THE COURT:** There are some overlapping lawyers, but  
13 they're not the same.

14 **MR. DRAKE:** There are some non-overlapping lawyers,  
15 yes, Your Honor.

16 **THE COURT:** They are not identical.

17 **MR. DRAKE:** That is correct.

18 **THE COURT:** So why is it that I'm having non-identical  
19 plaintiffs prohibited from serving discovery?

20 **MR. DRAKE:** Well, they're not prohibited under the  
21 proposed language of the order, Your Honor, from serving  
22 discovery that's not duplicative of what happens. They just  
23 have to make a showing and articulate to the Court how it's  
24 different from what's already going on here.

25 **THE COURT:** How are they supposed to know that?



1 They're not litigating here.

2 **MR. DRAKE:** Well, the co-lead counsel for the  
3 plaintiffs in the MDL, two of them, are members of the steering  
4 committee in this Court, so I believe that they do know --

5 **THE COURT:** Okay. You just said that the co-lead  
6 counsels in the MDL are -- are --

7 **MR. DRAKE:** The co-lead -- two of the co-lead counsel  
8 in the JCCP are members of the plaintiffs' steering committee  
9 in this proceeding. They all -- we are all talking and we are  
10 all coordinating around what kind of discovery is being served.  
11 It's not happening in silos or secrecy.

12 And the point that we're trying to articulate here is that  
13 in the JCCP, but also in all of these other cases that may be  
14 filed around the country, that those judges and the plaintiffs  
15 in those courts, in those cases, try to limit -- do not just  
16 engage in discovery of a different scope that has occurred here  
17 and specifically perhaps discovery that Your Honor has not  
18 permitted.

19 **THE COURT:** What?

20 **MR. DRAKE:** Well, if Your Honor issues an order that  
21 says discovery request X is not permissible under the scope of  
22 these lawsuits in this Complaint, a plaintiff in another court  
23 is free to serve that discovery under the coordination order if  
24 it shows good cause and the need for that in that particular  
25 case. But, otherwise, Your Honor's orders would be

1 circumvented in the other cases, and that's the general purpose  
2 of the coordination order.

3 My -- if I can go back, though, to my recommendation or  
4 suggestion to Your Honor, I don't feel like the parties have  
5 spoken clearly to one another in connection with preparing this  
6 particular order. And as Your Honor pointed out, I believe  
7 there have been many developments, more cases have been filed,  
8 etc., in the time since May.

9 Perhaps we could confer further on an appropriate path  
10 forward that we could present to Your Honor in advance of the  
11 December 13th conference and see if we can make some progress  
12 on narrowing the disputes and seeing if we can offer something  
13 that might be more constructive or appealing to the Court.

14 **MS. MCNABB:** Your Honor, plaintiffs are happy to meet  
15 and confer again, although we met and conferred about this  
16 coordination order for months.

17 Plaintiffs are not going to agree to an elaborate order,  
18 again, that strips authority from other courts or prohibits  
19 parties from prosecuting or defending a case in the way that  
20 they choose in other jurisdictions.

21 The other thing, if we -- if we set aside the JCCP, as  
22 counsel has suggested we do, there are State AGs or -- and I  
23 don't know the details of Mr. Bergman's three cases, but I  
24 suspect those are quite different, and they are not part of  
25 this litigation, and they will not have the luxury of having

1 seen what has been propounded or produced in this litigation.

2 **THE COURT:** Have you all coordinated or met and  
3 conferred with the AGs who are here as part of this discussion  
4 on the coordination order?

5 If I could have perhaps Ms. Miyata come back.

6 And you can take the middle mic.

7 **MS. MIYATA:** Thank you, Your Honor.

8 No, we have not been part of those conversations.

9 **THE COURT:** Would it be useful to have you as part of  
10 this conversation?

11 **MS. MIYATA:** I think it would be useful to have us as  
12 part of this conversation, but --

13 **THE COURT:** Could you speak closer.

14 **MS. MIYATA:** Yep.

15 I think it would be useful, Your Honor, but I should note  
16 that we do not represent the states who have filed in their  
17 respective state courts here so I can't give a position as to  
18 their interests at this time.

19 **THE COURT:** You mean the eight states who filed in  
20 their own state courts?

21 **MS. MIYATA:** Correct, Your Honor.

22 **THE COURT:** Correct. But you do represent 33 states.

23 **MS. MIYATA:** That is correct.

24 **THE COURT:** Which is a significant number.

25 **MS. MIYATA:** That may be, Your Honor.

1           **THE COURT:** All right.

2           Ordered to meet and confer.

3           **MR. DRAKE:** Thank you, Your Honor.

4           **THE COURT:** And to bring the States into the  
5 conversation.

6           Let me just say that it seems to me that the defendants  
7 are in the best position to understand not only what they  
8 produced but the categories of information that they produced,  
9 and when there's not identical counsel litigating across the  
10 United States, it's not clear to me how they should be deemed  
11 to have to comply with something that a court has issued when  
12 they're -- when they're not part of this.

13           Now, if counsel's the same, I agree, they should know, and  
14 they should be -- they should be efficient, and you all should  
15 not have to duplicate effort when you have the same attorneys.  
16 But the whole point of the MDL is to try to increase  
17 efficiencies, so that's what I'm always going to look for,  
18 without impacting the ability of people not here to do what  
19 they think is best for their client, like the eight states AGs  
20 who are not part of this litigation.

21           But if 33 State AGs agree to something, you still -- you  
22 know, you've made progress because you're being efficient with  
23 33, but that doesn't mean you don't have to address the other  
24 eight on their own terms.

25           I just had your co-counsel up here arguing that what

1 happens in Utah should be the decision of the Utah court, not  
2 this one. So you can't have it both ways.

3 **MR. DRAKE:** And just to be clear, Your Honor, we're  
4 not asking to have it both ways, but what we're saying is and  
5 how we envision the order is that the plaintiffs in these other  
6 cases -- take Mr. Bergman's case, for example, against TikTok  
7 in New York State, which alleges the same things that are  
8 alleged in this Complaint.

9 He would get all of the documents that we produced in the  
10 MDL court as a result of the coordination order and then there  
11 would be a process that would prevent duplication of those  
12 efforts. Mr. Bergman, in that case, would have an opportunity  
13 to participate in the depositions that are taken in this case.

14 That's the spirit of the order, and if that didn't come  
15 across, Your Honor, we'll take a sharp pen to it and think  
16 about how we can revise that. But it's to enhance efficiency  
17 for both sides. It's not to limit what a plaintiff may be able  
18 to get access to in a different court. That's not the  
19 intention of the order here or as the orders have been entered  
20 in other MDLs. The same is true for the JCCP.

21 **THE COURT:** A response.

22 **MS. MCNABB:** Your Honor, there will have to be a very  
23 sharp pen taken to defense proposed order if that is indeed the  
24 case.

25 Some of the provisions very much restrict what plaintiffs

1 are allowed to do in other jurisdictions. And it's, again,  
2 inappropriate for the coordination order to dictate how a  
3 plaintiff can prosecute their case or what authority a court  
4 has over its own turf.

5 **THE COURT:** Okay. I'm set to see you on the 13th; is  
6 that right?

7 **MS. MCNABB:** Correct, Your Honor.

8 **THE COURT:** Any issue that I am going to address  
9 substantively on the 13th has to be teed up no later than  
10 December 6th, one week prior -- that would include this one --  
11 if you want me to do something about it.

12 **MR. DRAKE:** Yes, Your Honor.

13 **MS. MCNABB:** Understood.

14 **THE COURT:** Okay. What else?

15 **MS. HAZAM:** Your Honor, Lexi Hazam for individual  
16 plaintiffs.

17 I don't believe --

18 **THE COURT:** Hold on. Hold on.

19 When do you meet with Judge Kuhl again?

20 **MS. HAZAM:** There is a hearing on December 7th,  
21 Your Honor.

22 **THE COURT:** Okay. So December 6th is good. All  
23 right. Go ahead.

24 **MS. HAZAM:** Your Honor, I don't believe plaintiffs  
25 have further matters that haven't already been addressed by the

1 Court. For example, the Court has indicated that the matter  
2 with the protective order should be addressed with Magistrate  
3 Judge Kang, which we understand. So I -- I don't know that  
4 plaintiffs have further matters.

5 We had included a section of our status report -- this was  
6 a joint section -- that summarized the matters that are  
7 currently before the magistrate judge. If Your Honor would  
8 like to address that, we could.

9 We also have flagged that an order regarding a  
10 preservation of CCM has been entered into the JCCP and that the  
11 parties have agreed to present it to this Court for entry also.  
12 Those are not disputes but matters on which we wanted to inform  
13 the Court.

14 **THE COURT:** I appreciate the information but do not  
15 intend to engage when I have another judicial officer who is  
16 engaging.

17 **MS. SIMONSEN:** And, Your Honor --

18 **THE COURT:** Ms. Simonsen?

19 **MS. SIMONSEN:** From defendants' perspective,  
20 understanding the Court's direction, that discovery is now  
21 open, I think it would be helpful just to hear some guidance  
22 from the Court. I think from defendants' perspective, having  
23 just received Your Honor's order on Tuesday and received  
24 additional guidance from Your Honor today with respect to the  
25 scope of that order, for instance, as it relates to the failure

1 to warn claims, what we would submit would be in the interests  
2 of efficiency would be for the parties to meet and confer about  
3 the scope of discovery in these cases in light of that order  
4 and come back to Your Honor when we see you on the 13th with  
5 proposals in that regard so that we go about this very  
6 thoughtfully and deliberately and think about a way to  
7 structure discovery, go back it in an orderly fashion as the  
8 cases proceed.

9 That is something that Judge Kuhl has referenced in the  
10 JCCP proceedings, while also suggesting she would defer to this  
11 Court when it comes to the structuring of defensive discovery,  
12 and so with the benefit of both courts' orders, we would like  
13 an opportunity to meet and confer and come back to Your Honor  
14 with a proposal before discovery requests are served, for  
15 example.

16 **MS. HAZAM:** Your Honor, plaintiffs would respectfully  
17 object to proceeding in that manner. I don't think we agree  
18 with that characterization of Judge Kuhl's approach,  
19 necessarily. But, in any event, we believe that the discovery  
20 stay -- the Court has indicated it should be lifted and  
21 discovery should proceed. We spent a lot of time, both sides,  
22 obviously, getting to this point. We have every intent of  
23 proceeding efficiently. We think discovery disputes are best  
24 addressed in the context of discovery when it happens.

25 **THE COURT:** I agree. And Judge Kang is going to deal



1 with it, and you should address it with him in the first  
2 instance.

3 I am -- I am going to focus on the law and on the scope of  
4 any claims that can proceed. And given limited resources,  
5 that's the reason why I have an excellent magistrate judge  
6 helping me so that we can share the burden.

7 **MS. SIMONSEN:** Understood, Your Honor.

8 I think what might make sense is for, again, the parties  
9 to meet and confer and for Your Honor to direct us to go before  
10 the new magistrate judge with a proposal on how discovery  
11 should proceed, with an understanding that I know Judge Kuhl is  
12 looking for direction on that front from this Court. I -- I  
13 will --

14 **THE COURT:** I'll talk to Judge Kuhl. I mean, at  
15 this -- look, they're -- I don't know what they're going to do,  
16 and it sounds to me from some of your colleagues no one is  
17 particularly interested on your side in just giving over  
18 discovery. So it -- I think to the extent informal discovery  
19 can occur, that's great, but if not, they need to issue  
20 requests, and you need to respond, and your response may be  
21 it's beyond the scope, and they're going to say no, it's within  
22 the scope, and then Judge Kang will decide that.

23 **MS. SIMONSEN:** Understood, Your Honor. I think, just  
24 to be clear, the Meta defendants and I understand the Snap  
25 defendant as well, have been cooperating in good faith with

1 plaintiffs on their reproduction refresh request.

2 Meta has already produced 45,000 documents in these cases  
3 and will be producing many thousands more under this refresh,  
4 and so, you know, we're certainly not taking the position that  
5 we're trying to stymie this. All we are suggesting is that,  
6 you know, the purpose of these coordinated proceedings being  
7 brought together -- these proceedings being brought together is  
8 to see if we can enhance efficiencies, find ways not only to  
9 streamline the briefing, but also discovery --

10 **THE COURT:** I don't disagree. My only point is on  
11 discovery issues, you need to go first to Magistrate  
12 Judge Kang, and I'm going to focus on the legal issues.

13 **MS. SIMONSEN:** Understood, Your Honor. We will,  
14 therefore, reach out to Magistrate Judge Kang after consulting  
15 with the plaintiffs about a request to put into play some kind  
16 of discovery plan, taking into account the efficiencies that  
17 are to be gained from these coordinated proceedings, including  
18 in conjunction with the JCCP.

19 **MS. HAZAM:** Your Honor, I would simply say this sounds  
20 like a solution in search of a problem.

21 We have not propounded discovery yet. Discovery should  
22 proceed in accordance with the federal rules, including Federal  
23 Rule 1, which orders that it be efficient.

24 **THE COURT:** You're also asking for a lot without  
25 proceeding in the -- in accordance with the federal rules, so

1 on your side, you can't have it both ways either.

2 **MS. HAZAM:** Understood, Your Honor.

3 **THE COURT:** If you are going to try to have it both  
4 ways, then we have to coordinate and you have to get along.

5 **MS. HAZAM:** Understood, Your Honor. I think our  
6 understanding today is that the Discovery Order 1, Your Honor  
7 has provided guidance as to its scope, and we plan to adhere to  
8 that. Anything else we would have to do through formal  
9 discovery.

10 **THE COURT:** Okay. What else?

11 **MS. HAZAM:** I don't believe plaintiffs have anything  
12 further.

13 **THE COURT:** All right. Briefing. Back to the  
14 beginning.

15 Motions shall be brought by December 18th; oppositions,  
16 February 5th; replies, February 26th. One set of motions  
17 relate to the State AG Complaints plus the related individual  
18 Complaints. I think that's Claims 7, 8, and 9. A second set  
19 of motions relates to the balance of the individual Complaints  
20 and the Master Complaint.

21 I will say, no one is happy. I am not happy, you are not  
22 happy. No one's happy. Much sooner. And you wanted much more  
23 time.

24 I can tell you we will start working on these probably  
25 sooner than we get the opposition so I would suggest that you

1 not ask for any extensions. It may be to your detriment. And  
2 if you want to, you know -- if you can file your replies  
3 sooner, then you should.

4 **MS. HAZAM:** Your Honor, if I may, the one matter that  
5 was addressed in the status report that I don't believe we  
6 discussed, and Your Honor may want to hold it for another time,  
7 but that would be the schedule for the briefing on the school  
8 districts' Master Complaint.

9 **THE COURT:** Well, I don't have a Master Complaint yet,  
10 Ms. Hazam, so I'm not there yet.

11 **MS. HAZAM:** Okay. The parties had made proposals for  
12 a schedule, which included a date for its filing.

13 **MR. SCHMIDT:** And on that issue, Your Honor, we were  
14 able to confer further since the submission of the parties'  
15 respective positions on the school district issues. We were  
16 much closer, and I believe from further conferring, we can  
17 reach agreement on outstanding issues, if that's agreeable with  
18 Your Honor, and come back to Your Honor on that.

19 **THE COURT:** I'm not following you.

20 **MR. SCHMIDT:** We've talked -- we were not far apart on  
21 the school district timetable and other school district  
22 briefing cases. We've since conferred, and we think we can  
23 reach agreement, if we can have a little more time to confer  
24 and present a proposal to the Court.

25 **THE COURT:** Well, your proposals have not -- no. Hold

1 on. No. Not yet.

2 So I understand -- and, again, I'll get a decision out  
3 here, hopefully no later than Monday, with respect to  
4 leadership on the school district cases.

5 The suggestion is that the school districts would be able  
6 to file a Master Complaint by the 18th; is that right?

7 **MS. HAZAM:** That's correct. Both parties' schedules  
8 reflect that opening date with a filing of the Master  
9 Complaint.

10 **THE COURT:** All right. So the Master Complaint for  
11 the school districts will be filed on December 18th, and you  
12 all will flip flop. Motions on that will be filed -- you will  
13 have just filed your motions so you'll be free to work on this  
14 one. February 5th when you file that motion, any motions  
15 relative to the school district Complaints.

16 Oppositions, March 4th; replies, March 25th. You already  
17 have your 50-state survey, so it should be easier to  
18 accomplish.

19 With respect to the deadlines on the Short Form Complaints  
20 and the implementation order, it's fine with me if you all want  
21 to meet and confer on that. I am less concerned about that  
22 issue than I am the legal briefing, which is what I have to  
23 deal with.

24 **MS. HAZAM:** Understood, Your Honor.

25 **THE COURT:** So meet and confer on that timing. We'll

1 discuss that at the next case management conference.

2 Again, I want that meet-and-confer to be completed by  
3 December -- or at least something to me on those topics by  
4 December 6th.

5 **MR. SCHMIDT:** Understood, Your Honor.

6 **MS. MIYATA:** Your Honor, if I may ask a point of  
7 clarification regarding the briefing schedule for the States.  
8 I understand opposing counsel to have requested 80 pages for  
9 that motion to dismiss, and I'm curious if the Court has made a  
10 decision about page limits.

11 **THE COURT:** What do you think?

12 **MS. MIYATA:** In my opinion, 80 pages would be more  
13 than is necessary. I think we would suggest, assuming that the  
14 States' opposition and the individual plaintiffs' opposition  
15 briefs are running concurrently but will be two separate  
16 briefs -- I think 40 to 50 pages would be appropriate.

17 **THE COURT:** Well, they have to do both.

18 **MS. MIYATA:** Understood --

19 **THE COURT:** You're asking for the same pages for both  
20 of you, which I don't think is fair.

21 **MS. MIYATA:** But there is significant overlap in the  
22 work they need to do for each particular set of claims.

23 **THE COURT:** All right.

24 You can have your 80 pages.

25 You each get 50 pages to oppose, and so 80, 50, 50, 40

1 pages to reply.

2 **MR. SCHMIDT:** Your Honor, to be sure I understand  
3 that, Your Honor identified two separate sets of briefs we  
4 would be filing. The page limits Your Honor specified are per  
5 set?

6 **THE COURT:** No. I don't -- well, we talked about 80  
7 with respect to the State AG Complaints.

8 **MR. SCHMIDT:** Yes, Your Honor.

9 **THE COURT:** The Master Complaint for the school  
10 districts will likely just have nuisance and maybe negligence.  
11 Negligence you're going to deal with -- well, I assume -- well,  
12 I don't know if it's going to be the same with respect to --  
13 well, do you want to do it all in one?

14 **MR. SCHMIDT:** No. And I was actually asking something  
15 a little different, which is -- I might have misunderstood what  
16 the Court was saying, but as I understood Your Honor, on this  
17 initial round of briefing due December 18th, it would be one  
18 set of briefs that would address State Attorney General and  
19 then the related specified Claims 7, 8, and 9 and then another  
20 set of briefs that would address the balance of the personal  
21 injury claims.

22 **THE COURT:** No, you're right. You're right.

23 **MR. SCHMIDT:** That's where I was asking about the 80  
24 pages, because Your Honor is correct, we did ask for 80 pages  
25 as to the State AG claims. And there is some overlap we could

1 work with then for those additional 7, 8, and 9 but it's very  
2 different for the rest and --

3 **THE COURT:** I agree. It is different.

4 **MS. HAZAM:** Your Honor, not to complicate things  
5 further, but plaintiffs did want to clarify if Your Honor meant  
6 to include the claims that certain plaintiffs have against Mark  
7 Zuckerberg in the schedule that includes Counts 7, 8, and 9. I  
8 believe that was the Court's guidance earlier, and the parties  
9 were agreeable to that, but I wanted to clarify.

10 **THE COURT:** I didn't give guidance. That was the  
11 request. Is that still the request?

12 **MR. SCHMIDT:** Yes. But we think those are unique  
13 issues as to a unique defendant with questions that don't  
14 relate to corporate liability but individual liability. Those  
15 are very different. Those we would request to have as their  
16 own set of briefing with their own set of defaults, Northern  
17 District of California local rules page limits.

18 **THE COURT:** Do I have any lawyer who's -- who has  
19 those specific issues?

20 **MS. HAZAM:** Yes. My colleague, Matt Jasinski, can  
21 address that matter.

22 **MR. JASINSKI:** Good afternoon, Your Honor. Mathew  
23 Jasinski with Motley Rice.

24 We do have individual Complaints that name Mark  
25 Zuckerberg, and we've happy to brief that in accordance with



1       whichever schedule the Court prefers.

2               **THE COURT:** Well, that should -- that should be able  
3       to be briefed pretty quickly. I mean, they're very specific;  
4       right?

5               **MR. JASINSKI:** Yes, Your Honor.

6               **THE COURT:** Great. December 18th. Typically the  
7       opposition would be due in two weeks, but we'll extend that.

8               **MR. JASINSKI:** I think, Your Honor, if it could be on  
9       the same schedule, that would be very helpful.

10              **THE COURT:** Why? It wouldn't be helpful to me. Why  
11       would it be helpful?

12              **MR. JASINSKI:** Well, Your Honor, it would be helpful  
13       to us, obviously. I want to take the Court's -- it would be  
14       helpful to us because of all of the briefing, but having said  
15       that, if Your Honor would prefer to accelerate that briefing,  
16       we will comply with that.

17              **THE COURT:** It means that we can work on something  
18       while you all are working, too. That's why I'm asking the  
19       question. Is there some reason that --

20              **MR. JASINSKI:** I think if the deadline is  
21       December 18th, we obviously have the holidays, so we would  
22       appreciate --

23              **THE COURT:** I agree.

24              **MR. JASINSKI:** But if Your Honor would prefer the  
25       brief come in sooner than the February 4th deadline on the

1 other brief, we'll comply with that.

2 **THE COURT:** Opposition, January 16th; reply,  
3 January 23rd. That's -- that's a standard motion in this  
4 district, and it's a very narrow issue.

5 Now, I'm not going to get you a response until I hear --  
6 see the other arguments, but at least we can start working on  
7 it.

8 **MR. JASINSKI:** Very good.

9 **MR. SCHMIDT:** Thank you, Your Honor.

10 **THE COURT:** Okay. Back to the page limits on the --  
11 on the other claims.

12 So what I'm seeing is you've got negligence, negligent  
13 undertaking, whatever that is, violations of then numerous acts  
14 under Title 18.

15 **MS. HAZAM:** Those relate to generally CCM claims,  
16 Your Honor.

17 **THE COURT:** And then wrongful death, survival action,  
18 and loss of consortium.

19 **MS. HAZAM:** Yes, Your Honor.

20 **MR. SCHMIDT:** And on that point, Your Honor, one thing  
21 we had built into our proposal was some period to confer on  
22 what claims remain. As we understood it during the argument on  
23 the motion to dismiss, there was some suggestion that maybe not  
24 all these claims would be pursued by plaintiffs. We think that  
25 would certainly be well taken. And --

1           **THE COURT:** All right. So I think that that's  
2 appropriate. I don't know if they're -- I don't know what  
3 they're thinking. But plaintiffs by December 6th must file a  
4 notice indicating whether any claims in the Master Complaint  
5 are being withdrawn.

6           **MS. HAZAM:** Understood.

7           **THE COURT:** Given some of the rulings with respect to  
8 the third-party content, I would like to know the answer to  
9 that question.

10          **MR. SCHMIDT:** Thank you, Your Honor;

11          **THE COURT:** Okay. All right. Back to my question,  
12 page limits on -- on the remaining claims.

13          **MR. SCHMIDT:** On the remaining claims, I think the  
14 defense would propose something equivalent to what I proposed  
15 for the -- for the State AG claims, something in the order of  
16 80 pages, with the view that we could come in considerably  
17 below that --

18          **THE COURT:** You never do. That's the problem.

19          **MR. SCHMIDT:** That's a fair point, Your Honor.

20          **THE COURT:** Let's do this. For now, 60, 60, 30. Map  
21 it out. If you can give me some specific indication at the  
22 next conference that you've outlined these arguments and you  
23 need more than that, I'll consider it.

24          **MR. SCHMIDT:** Thank you, Your Honor.

25          **THE COURT:** All right. But everyone should remember

1 Mark Twain's famous quote, right: "I apologize. I did not  
2 have enough time to write you a short letter."

3 It takes time. I understand it. And I'm squishing you on  
4 your time, but we need to move this thing forward. And I need  
5 to make sure I have enough time to help.

6 The other thing that you should know, I -- again, this  
7 spring I'm going to try to really focus on trying to get  
8 rulings out to you so that this whole process can move forward.  
9 I was supposed to be in trial all next spring for three months.  
10 That trial is now moved to June, so I'm in trial virtually the  
11 entire summer. I'm trying to get all of this done before that  
12 happens on top of the four trials I have next summer -- I mean,  
13 next -- in early 2024, including a trial with Google.

14 So a lot going on, and we're going to try to get, like I  
15 said, some rulings out on these topics for you. But that does  
16 mean that you're going to have to get me stuff.

17 **MR. SCHMIDT:** And we will do that, Your Honor. The  
18 Mark Twain quote is really well taken in this setting, and it  
19 goes back to a comment Your Honor raised earlier. We are doing  
20 our best on the defense side to get Your Honor a single set of  
21 briefs across the defendants that take into account every  
22 defendant's view, and that's a tough process with four  
23 different --

24 **THE COURT:** It is a tough process.

25 **MR. SCHMIDT:** -- four different clients, and it's

1 tough doing it in a streamlined way, and Your Honor had  
2 feedback on how we briefed things before that we obviously want  
3 to be mindful of. That's why we've been asking, frankly, for  
4 more time on some of these issues because it does let us  
5 streamline more, but we understand where the Court is.

6 **THE COURT:** I can appreciate that. And as you know,  
7 at least with respect to -- let me look at one of my other  
8 charts here. On the negligence per se, I recognize you ran out  
9 of space, and so we'll deal with that at some other point, not  
10 right now. Because while I like charts, it's not helpful when  
11 you're both citing the exact same case for the opposite  
12 proposition.

13 And there's lots -- you know, there's lots of moving parts  
14 on this thing. But I understand my own calendar, too, which  
15 you have less visibility into, and I understand what -- when my  
16 resources are available and when they're not. And we are more  
17 hamstrung than you all are on that front. So...

18 **MS. HAZAM:** Your Honor, one remaining point that  
19 relates to scheduling that I believe we could probably defer to  
20 the December hearing and meet and confer about it, but just to  
21 flag it, plaintiffs, mindful of the fact that there could be  
22 some time before rulings issue, have asked defendants to  
23 provide a statement of affirmative defenses before an answer  
24 would be due to help us guide discovery in the interim.

25 **THE COURT:** So there is an objection to that, from

1 what I've read.

2 **MS. HAZAM:** Yes.

3 **THE COURT:** And I'm not going to order them to do  
4 that. So I'm ordering them to focus on lots of other issues.  
5 Their affirmative defenses are going to shift.

6 I have, from what I understand, the best products  
7 liability plaintiffs lawyers in the country. You know what the  
8 general affirmative defenses are and you can make those  
9 arguments to the magistrate judge but you're not operating in a  
10 vacuum here. So, no.

11 **MS. HAZAM:** Understood, Your Honor.

12 **THE COURT:** I'm not going to order it.

13 **MR. SCHMIDT:** Thank you, Your Honor.

14 **THE COURT:** Okay. What else do we have out there?  
15 Let me get on your calendar. I will try to meet with you on a  
16 monthly basis until this thing is well on its way.

17 I've given you a date in December. Let me give you a date  
18 in January, but I have to pull you up the calendar.  
19 January will likely be at the end of the month because I will  
20 be in trial. Hold on.

21 How does January 31st look?

22 **MR. SCHMIDT:** That works for the defense, Your Honor.

23 **MS. HAZAM:** And it works for plaintiffs, Your Honor.

24 **THE COURT:** All right. Let me -- let me make sure  
25 that I'm not double booking.

1 Did you want to say something?

2 **MS. MIYATA:** No, Your Honor. I just anticipated more  
3 dates were coming, so --

4 **THE COURT:** Does that work for you?

5 **MS. MIYATA:** Yes, Your Honor.

6 **THE COURT:** Our system can be very slow.

7 By any chance, do you have my calendar up?

8 **THE CLERK:** Yes.

9 **THE COURT:** Do you see anything on the 31st other than  
10 trial?

11 **THE CLERK:** No, Your Honor.

12 **THE COURT:** Okay. So this is what I'll do. I'm going  
13 to set it for 2:30. If I'm not in trial --

14 **THE CLERK:** Actually, I apologize. Do you have a 2:00  
15 pretrial conference. I'm so sorry.

16 **THE COURT:** That's okay.

17 **THE CLERK:** Wrong year.

18 **THE COURT:** All right. Hold on.

19 Okay. January 26. I can set it at 2:00. That's a  
20 Friday. I know many of you are traveling from out of state, so  
21 if I can move it to the morning, I will, but it is possible, in  
22 fact, likely that I'll be in trial in the morning, which means  
23 that you'll come in after my trial day.

24 **MS. HAZAM:** That's fine with plaintiffs, Your Honor.

25 **MR. SCHMIDT:** Fine with defendants, Your Honor.

1           **THE COURT:** All right.

2           **MS. MIYATA:** That works for us as well.

3           **THE COURT:** So January 26th, that's Friday, at  
4           2:00 p.m. Let's say 2:30. And then in February, same thing,  
5           so we'll do Friday, February 23rd.

6           Does that work?

7           **MR. SCHMIDT:** Yes for defendants, Your Honor.

8           **MS. MIYATA:** That works for the States.

9           **MS. HAZAM:** And for the plaintiffs.

10          **THE COURT:** Okay. February 23rd, again at 2:30.  
11          Again, I'm supposed to be in trial, so come in after my trial  
12          day, but if I'm not in trial, then we'll post a notice and try  
13          to make it in the morning so that people can travel. Okay?

14          Why don't we go ahead and just set the March one at about  
15          the same time so February-- I mean, March 22nd, 2:30. That way  
16          it's on everyone's calendars. Okay?

17          **MR. SCHMIDT:** Thank you, Your Honor.

18          **MS. HAZAM:** Thank you.

19          **THE COURT:** Okay. Fun times.

20          **MR. SCHMIDT:** That's the word for it, Your Honor.

21          **MS. HAZAM:** Can we invite the kids again?

22          **THE COURT:** All right. I will -- I'll issue a written  
23          order with -- with these dates, some of the things that we've  
24          talked about today.

25          And I will wish all of you a very happy and safe



1 Thanksgiving. And I will see you in December.

2 **MR. SCHMIDT:** Thank you, Your Honor.

3 **MS. HAZAM:** Thank you, Your Honor.

4 **THE COURT:** We're adjourned.

5 (Proceedings adjourned at 2:05 p.m.)

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

DATE: Monday, November 19, 2023

*Pamela Batalo Hebel*

---

Pamela Batalo Hebel, CSR No. 3593, RMR, FCRR  
U.S. Court Reporter